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LB 273 857

CONGDON'S  
MINING LAWS  
AND FORMS.

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H. H. BANCROFT & Co.

1864.

THE NEW CORPORATION ASSESSMENT LAW—1866.

AN ACT CONCERNING ASSESSMENTS UPON THE STOCK OF CORPORATIONS.

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The Trustees of any corporation, formed under the general laws of this State, shall have power to levy and collect, for the purpose of paying the proper and legal expenses of such corporation, assessments upon the capital stock thereof, in the manner and form and to the extent hereinafter provided, and not otherwise.

SEC. 2. No one assessment shall exceed five per cent. of the stated amount of the capital stock of the corporation, named in the articles of incorporation, and none shall be levied while any portion of any previous assessment shall remain unpaid, or uncollected, except in cases where all the powers of the corporation shall have been exercised in accordance with the terms of this act, for the purpose of collecting such previous assessment, and except, also, the collection of a previous assessment against one or more stockholders, restrained by injunction or otherwise; in which case, further assessment may be levied and collected according to this act.

assessment, together with costs of advertising and expenses of the sale. [Signature of the Secretary, with particular location of office.]”

SEC. 6. Said notice shall be published once each week for four successive weeks in some daily or weekly paper published at the place designated in the articles of corporation as the principal place of business of the corporation, and also in some paper published in the county in which the works of the corporation are situated, if a paper be published therein: *provided*, that if the works of the corporation are not situated within some State or Territory of the United States, then publication in a paper of the County shall not be necessary; *provided, also*, that if there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication shall be made in the newspaper published nearest thereto; and *provided, also*, that the notice specified in the 5th section of this act may be served by delivering a copy thereof, certified by the Secretary, to each stockholder personally, and in case of such service upon all the stockholders of said corporation, then no notice by publication shall be necessary, and such personal notice shall be deemed complete.

SEC. 7. If any portion of the assessment men-

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upon the records of the corporation.

Sec. 4. Every order levying an assessment shall specify the amount thereof and the time when the person or persons to whom and the place or places where the same is payable. It shall also appoint a day subsequent to the full term of publication of the assessment notice on which the stock upon which assessments remain unpaid shall be deemed delinquent, which said day shall not be less than thirty, nor more than sixty days, from the time of the making of the said order levying the assessment, and a day for the sale of delinquent stock, which shall not be less than fifteen, nor more than sixty days from the time appointed for declaring said stock delinquent.

Sec. 5. Upon the making of such an order, the Secretary shall cause to be published immediately a notice thereof in the following form:

"[Name in full.] [Location of works.] Notice is hereby given that at a meeting of the Trustees of said Company, held on the [date], an assessment of [amount] per share was levied upon the capital stock of said Company, payable [name, to whom, and where, particularly]. Any stock upon which said assessment shall remain unpaid on the [day fixed] shall be deemed delinquent, and will be duly advertised for sale at public auction, and unless payment shall be made before, will be sold on the [day appointed], to pay the delinquent &

otherwise ordered by the Board of Trustees, cause to be published in the same papers in which the notice provided for in Sec. 5 shall have been published, a notice substantially in the following form:

"[Name in full. Location of works.] Notice. —There is delinquent upon the following described stock, on account of assessments levied on the [date] and assessments levied previous thereto, if any, the several amounts set opposite the names of the respective shareholders, as follows: [Names, number of certificate, number of shares, amount.] And in accordance with law, [and an order of the Board of Trustees, made on the [date], if any such order shall have been made,] so many shares of each parcel of said stock as may be necessary, will be sold at the [particular place,] on the [date] at [the hour] of said day, to pay said delinquent assessments thereon, together with costs of advertising and expenses of the sale. [Name of Secretary, with particular location of office.]

Sec. 8. Said last named notice shall state every certificate of stock with the number of shares which it represents, and the amount due thereon, separately, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued shall be stated.

Sec. 9. Said notice, when published in a

daily or weekly paper, or in both, shall be published as follows: When published in a daily paper, the same shall be published for a period of ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, the same shall be published for two weeks previous to the day of sale. The first publication of all delinquent sales shall be at least fifteen days prior to the day of sale.

Sec. 10. By the publication of the said notices, as hereinbefore provided, the corporation shall acquire jurisdiction to sell and convey a full, complete, perfect, and absolute title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising shall remain unpaid at the hour appointed for the sale, but shall sell no more of such stock than is necessary to pay the assessments due and cost of sale.

Sec. 11. On the day and at the place, and as nearly as may be at the hour appointed in the notice of sale, the Secretary, who is hereby fully empowered and authorized, shall, unless otherwise ordered by the Board of Trustees, sell, or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of said described stock as may be necessary to pay the assessment and charges thereon, according to the terms of said notice of sale; *provided*, that if payment be made before the time fixed for sale, the party paying

stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase as aforesaid, a majority of the remaining shares of stock in said corporation shall be held to be a majority of the shares of the stock in said corporate company for all purpose of election or voting on any question before a stockholders' meeting.

Sec. 14. The times or dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions of this act, may be once extended for a period of not more than thirty days, by order of the Board of Trustees, duly made and entered on the records of the corporation, but no order for extending the time for the performance of any act specified in any notice shall be effectual unless notice of such extension or postponement be appended to and published with the notice to which [the] order relates.

Sec. 15. No assessment duly levied shall be rendered invalid by a failure to make proper publication of the notices hereinbefore provided for, nor by the non-performance of any act required to be performed in order to enforce the payment of the same; but in case of any substantial error or omission in the course of

pay the assessment and costs for the smallest number of shares, or fraction of a share, shall be deemed the highest bidder.

SEC. 13. If, at the sale of any stock under the foregoing provisions of this Act, no bidder shall offer to take and purchase the same for the amount of the assessments, and costs and charges then due upon the same, then and in such case the same may be purchased and bid in by the company or corporation, through the Secretary or President, or any Director or Trustee thereof, at a sum equal to the amount of the assessments, costs, and charges due upon the same; and in pursuance and by virtue of such purchase, the said assessments, costs and charges, shall be credited, as satisfied and paid in full, on the books of such corporation, and entry of the transfer of such stock to such corporation, in pursuance of such sale and purchase, shall be made on the books of said corporation. While such stock shall remain the property of such corporation, the same shall not be assessable, nor shall any dividends be declared upon the same; but all assessments and dividends shall be apportioned upon and against the other stock of such company not owned by such corporation. All purchases of its own stock made by any corporation, in accordance with the provisions of this section, shall be held valid, and as vesting the legal title to the same in said corporation; and the

new.

SEC. 16. No action shall be sustained to recover any stock, or invalidate the sale of any stock for delinquent assessments, upon the ground of any irregularity in making the assessment, or for any irregularity in or defect of the notice of such sale, or for any defect or irregularity in the sale, unless the party seeking to maintain such action shall first pay or tender to the corporation or the party holding such stock so sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action shall be sustained unless the same shall be commenced by the filing of a complaint and the issuance of a summons thereon within six months after such sale shall have been made.

SEC. 17. "An Act Concerning Assessments upon the Stock of Corporations," approved April 4th, 1864, and all Acts and parts of Acts, inconsistent with the provisions of this Act, are hereby repealed; *provided*, that such repeal shall not affect proceedings commenced for the collection of assessments heretofore levied, but all such assessments may be collected in accordance with the provisions of the laws then in force.

SEC. 18. This Act shall take effect immediately.

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# MINING LAWS AND FORMS:

BEING A COMPILATION OF THE

## STATUTES OF CALIFORNIA

AND

## TERRITORY OF NEVADA,

IN REFERENCE TO

MINING CORPORATIONS, CANAL COMPANIES, ASSESSMENTS, MINING PARTNERSHIPS, TRANSFER AGENCIES, CHANGING PRINCIPAL PLACE OF BUSINESS, MINERAL LANDS, CONVEYANCES OF, AND ACTIONS RESPECTING MINING CLAIMS, TAXATION, FOREIGN MINERS, Etc.

TOGETHER WITH

## THE MINING ORDINANCES OF MEXICO,

Forms for the Incorporation of Mining Companies, and a Digest of Decisions of the Supreme Court of California relative to Mining Corporations and Mining Interests.

COMPILED BY H. B. CONGDON.

THIRD EDITION.

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H. H. BANCROFT AND COMPANY.

1864.

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Entered according to Act of Congress in the year of our Lord 1864,

By H. B. CONGDON,

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PREFACE TO THE FIRST EDITION.

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THE present volume contains all the laws and decisions which relate to Mining Corporations in the State of California; also the necessary forms used in the incorporation of Mining Companies. It is published because of the great necessity for such a work. Many thousands of men in California and Nevada Territory are directly engaged in mining, and thousands more are owners of mining stocks; many millions of capital are invested in them, and nearly the whole business of California and Nevada Territory is based on mining interests; yet comparatively few persons know anything definite about the laws which govern these great interests. These laws are simple and easily understood.

The professional man will find the present volume of great convenience, as all the Mining Laws are compiled in their proper order, and the decisions of the Supreme Court bearing on the subject are arranged under appropriate heads. The most approved forms used in the formation of companies and a full and complete index are appended; and there will be no occasion for looking beyond the present volume for any law, decision, or form which relates to the subject.

To the great number of individuals who are members of Incorporated Mining Companies and owners of mining stock, as well as to those who may hereafter become interested in like companies, this little compilation presents an opportunity of acquiring a perfect knowledge of the laws which govern the subject of their interests.

To persons who may desire to form Mining Companies it gives complete instruction, and will enable them to commence and perfect their organization without legal advice or assistance.

H. B. C.

SAN FRANCISCO, July, 1863.

## PREFACE TO THE THIRD EDITION.

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SINCE the publication of the First and Second Editions of MINING LAWS AND FORMS the Statutes of the State of California relating to the subject matter of the volume have been so far changed and amended as to render those Editions, in many respects, useless, and to occasion an earnest demand by the public for a new and enlarged edition.

The Compiler has therefore carefully revised the work, and has included in this Edition all the laws of the State of California in force at the present time, of interest to Mining Corporations and persons interested in mining. This Edition also includes a careful and thorough compilation of all the laws of the Territory of Nevada on the same subjects.

The large amount of California capital invested in Mexican Mines has occasioned a demand for information relative to the laws of that country concerning the mines; and the Compiler has been induced to also include in this Edition the Code of Mining Ordinances of Mexico (of 1783), complete, and has added thereto several important decrees of the Mexican Government, defining the rights and privileges of foreigners resident in that country.

The public will also find in this Edition a full and complete Digest of the Decisions of the Supreme Court of California bearing on the subject of mining, and all kindred subjects, brought down to and including those contained in the latest published volume of the Reports, arranged under the laws and sections to which such decisions are applicable.

The "Forms" have been revised and made to conform to the demands which the latest experience has made advisable, and will be found to be adapted to the wants of persons desiring to form corporations, as well as of mining companies and their officers.

The present Edition of this work is confidently placed before the public, in the belief that it supplies a public want, and that it will receive the public patronage.

H. B. C.

SAN FRANCISCO, July, 1864.

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THE MINING LAWS  
OF THE  
STATE OF CALIFORNIA.

CORPORATIONS.

*AN ACT to provide for the formation of Corporations for certain Purposes.*

[Passed April 14th, 1853—Wood's Dig. pp. 119, 906; Statutes 1853, p. 87; Statutes 1855, p. 205; Statutes 1858, p. 133.]

SECTION 1. (*As amended by Act of March 5th, 1864—Stat. 1863—4, p. 149.*) Corporations for manufacturing, mining, mechanical, mercantile, wharfing and docking, or chemical purposes, or for the purpose of engaging in any other species of trade, business, or commerce, foreign or domestic, may be formed according to the provisions of this act; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others.

SEC. 2. (*As amended by Act of March 7th, 1859—Stat. 1859, p. 93.*) Any three or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the

County Clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the Clerk and seal of the County Court of said county, in the office of the Secretary of State, a certificate in writing, in which shall be stated the corporate name of the company, the objects for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first three months, and the names of the city, or town, and county, in which the principal place of business of the company is to be located.

#### Certificate of Incorporation.

1. The existence of a corporation, formed under a general statute, requiring certain acts to be done before the corporation can be considered *in esse*, or its transactions be valid, must be proved by showing, at least, a substantial compliance with the requirements of the statute. *Mokelumne Hill C. & M. Co. v. Woodbury*, 14 Cal. 424.
2. The omission of such acts as are declared necessary steps in the process of incorporation will be fatal, even collaterally, when the fact of incorporation can be questioned. *Id.*
3. But as to such other acts required of the persons seeking to become incorporated, but not made prerequisites to the assumption of corporate powers, the corporation is responsible only to the Government in a direct action of forfeiture. *Id.*
4. Under our law, corporations have a legal existence from the date of filing the certificate of incorporation in the County Clerk's office. *Id.*
5. That a duplicate certificate is not filed in the office of the Secretary of State, is matter between the corporation and the State, and not necessary to be shown on the issue of corporation or no corporation in suits against third persons. *Id.*
6. Where the certificate of incorporation states that San Francisco is "the place of business," instead of "the principal place of business:" *held*, to be mere technical error, not invalidating the charter. *Ex parte Spring Valley Water Works*, 17 Cal. 132.
7. The existence of a corporation formed under the general State law is proved by its articles of incorporation executed and filed in accordance with the statute. *Spring Valley Water Works v. San Francisco*, 22 Cal. 434.
8. In incorporating under the general law a strict compliance with all the requirements of the statute is not essential, and the proceedings will not be held invalid for slight defects or omissions. *Id.*



9. The omission or irregular performance of acts relating to the organization of a corporation, can only be investigated in a direct proceeding instituted by the State for that purpose, and not in a collateral action. So, too, of those acts which are not made prerequisites to the exercise of corporate powers but which operate as a forfeiture. *Id.*

#### DEFECTIVE ACTS OF INCORPORATION.

*An Act amendatory and supplemental to an act entitled an Act to provide for the formation of Corporations for certain purposes, passed April 14th, 1853.*

[Approved March 7th, 1859; Stat. 1859, p. 93.]

SECTION 2. All corporations heretofore formed under the provisions of the act of which this is amendatory, who have filed a certified copy of the certificate in writing, required to be executed in the first section of this act, in the office of the Secretary of State, shall to all intents and purposes, be as legally incorporated as though a duplicate thereof had been filed in the office of the said Secretary of State, and all acts heretofore done by such companies under their corporate name in conformity to the laws governing corporations in this State are hereby made lawful acts."

#### *An Act concerning Corporations.*

[Approved April 1st, 1864; Stat. 1863-4, p. 303.]

SECTION 1. All associations or companies heretofore organized and acting in the form and manner of corporations, and that have filed certificates for the purpose of being incorporated, but whose certificates are in some manner defective, or have been improperly acknowledged, or have been acknowledged before a person not authorized by law to take such acknowledgments, are hereby declared to be and to have been corporations from the date of the filing of such certificates, in the same manner and to the same effect and intent as if such certificate were without fault and properly acknowledged before the proper officer, and all such certificates are hereby validated and declared to be legal, and shall have the same force and effect as if such certificates were free from all fault or defect, and were properly acknowledged before an officer having authority to take such acknowledgments.

SEC. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the County Clerk of the county in which it is filed, or his deputy, or by the Secretary of State, shall be received in all Courts and places as presumptive evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name have succession for the period limited, and power: *First*, to sue and be sued in any Court; *Second*, to make and use a common seal, and alter the same at pleasure; *Third*, to purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require; *Fourth*, to appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation; *Fifth*, to require of them such security as may be

thought proper for the fulfillment of their duties, and to remove them at will—except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of the majority of the trustees, upon a written request signed by stockholders of two-thirds of the whole stock; *Sixth*, to make by-laws, not inconsistent with the laws of this State, for the organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

#### Powers of Corporations.

1. The policy of the State has altered the rigidity of the common law, which disabled a corporation from making a contract except under its corporate seal. *Smith v. Eureka Flour Mills*, 6 Cal. 6.

2. Under the laws of this State, the power of corporations to create debts is treated as an incident to the express powers, and not as in itself one of the express powers. *Id.*

3. All corporations by the general act have power to make by-laws for the "organization of the company," the "management of its property," the "regulation of its affairs, and for carrying on all kinds of business within the objects and purposes of the company," in which there is no reason to exclude the right of making promissory notes. *Id.*

4. The express powers of a corporation must be exercised in the manner pointed out by the statute, but the powers merely incident thereto may be exercised by its officers or agents. *Id.*

5. Corporations can possess or exercise such corporate powers only as are expressly given by statutes, or by the charter, and such as shall be necessary to the exercise of the powers enumerated and given. *Dunbar v. City of San Francisco*, 1 Cal. 356; *Correas v. City of San Francisco*, *Id.* 452.

6. If a charter confers upon a corporation a given power, and at the same time prescribes the mode of its exercise, the provision must be held as dependent and must be construed accordingly. *Holland v. City of San Francisco*, 7 Cal. 375.

7. Charters of corporations are special grants of power emanating from the paramount authority. The corporation owing its existence to the law is precisely what the law makes it. *City of Oakland v. Carpentier*, 13 Cal. 545.

8. Corporations are bound to follow strictly the letter of their charter, and can exercise no power unless granted to them, or absolutely necessary to carry out the power so granted. *Smith v. Morse*, 2 Cal. 538.

9. The word "person," in its legal signification, is a generic term, and was

intended to include artificial as well as natural persons. *Douglas v. Pacific M. S. S. Co.*, 4 Cal. 306.

10. In reference to all transactions in the nature of a contract, a corporation must be looked upon and treated as a private person, and its contracts construed in the same manner and with the like effect as those of natural persons. *Touchard v. Touchard*, 5 Cal. 307.

11. The incorporation act of 1853 does not substantially alter the incorporation law of 1850. *Weston v. Bear River and Auburn W. & M. Co.*, 6 Cal. 429.

12. The power of removing the private or ministerial officers of a private corporation belongs to the corporation alone. Courts cannot remove such officers. *Neall v. Hill*, 16 Cal. 145.

13. Neither the general incorporation act, nor the act concerning plank roads and turnpikes, gives any exclusive privileges to the corporation first established. Others may build a road on or near the same line of travel. *Indian Cañon Road Co. v. Robinson*, 13 Cal. 520.

14. Two corporations cannot hold as joint tenants, but may as tenants in common. *Dewitt v. City of San Francisco*, 2 Cal. 297.

15. A corporation, unless expressly prohibited by law or the provisions of its charter, has power to make all contracts that are necessary and usual in the course of the business it transacts as means to enable it to effect the object of its creation. *Union Water Co. v. Murphy's Flat Fluming Co.*, 22 Cal. 620.

16. A contract by a corporation, which is not upon its face necessarily beyond the scope of its authority, will, in the absence of proof, be presumed to be valid. *Id.*

17. In an action by a corporation upon a contract made by it with the defendant, the latter cannot interpose as a defense that the plaintiff in making the contract has exceeded the power conferred by its charter or the law under which it was formed. The question of a violation of its charter is one between the State and the corporation, and cannot be investigated collaterally by individuals. *Id.*

SEC. 5. The corporate powers of the corporation shall be exercised by a Board of not less than three trustees, who shall be stockholders in the company, and a majority of them citizens of the United States and residents of this State, and who shall, after the expiration of the term of the trustees first selected, be annually elected by the stockholders at such time and place, and upon such notice and in such mode as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he

owns shares of stock ; and the persons receiving the greatest number of votes shall be trustees. When any vacancy shall happen among the trustees by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

SEC. 6. If it should happen, at any time, that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the by-laws of the company ; and all acts of trustees shall be valid and binding upon the company until their successors shall be elected.

SEC. 7. A majority of the whole number of trustees shall form a Board for the transaction of business, and every decision of a majority of the persons duly assembled as a Board shall be valid as a corporate act.

SEC. 8. The first meeting of the trustees shall be called by a notice, signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least ten days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company ; but no transfer shall be valid, except between the parties thereto, until the same shall have been so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

**Assignment, Transfer, and Mortgage of Stock.**

1. Under the twelfth section of the act concerning corporations, passed April 22d, 1850, no transfer of stock is good against third parties, unless the transfer be made on the books of the company. *Weston v. Bear River and Auburn W. & M. Co.*, 5 Cal. 186.

2. Where a *femme sole* became the owner of shares in a company, and afterwards marries, and after marriage the husband and wife execute an indorsement on the certificate of stock, purporting to sell the same to A, without any privy examination of the wife, and there being at the time no inventory of the separate property of the wife on record: *held*, that such sale was void, as against a subsequent purchaser, under an instrument duly signed and acknowledged. *Selover v. American Russian Com. Co.*, 7 Cal. 266.

3. Where A received an assignment of stock in a corporation, and the stock was subsequently attached under a judgment against the vendor, and afterwards the stock was regularly transferred to A, who then obtained an assignment of the judgment under which the stock was attached: *held*, that the assignment of the judgment at once merged the lien in the higher right; and that A, as regarded third parties, became the absolute owner of the stock. *Strout v. Natoma W. & M. Co.*, 9 Cal. 78.

4. A railroad company cannot refuse to enter the transfer of stock in the company on their books on the ground that the assignor of the stock is indebted to the company, unless the company had a lien upon the stock at the date of its transfer. *People v. Crockett*, 9 Cal. 112.

5. Where shares of stock in a corporation have been regularly transferred as security for a loan, the mortgagee is the only proper garnishee in a suit against the mortgagor, and attachment on his interest in the corporation. *Edwards v. Beugnot*, 7 Cal. 162.

6. Where from an instrument transferring shares of stock as security for a note, and from other circumstances, the transaction is clearly a loan, a clause of foreclosure on non-payment, or a provision that the mortgagee may take the property for the debt, does not make the instrument any the less a mortgage. *Smith v. '49 and '56 Quartz M. Co.*, 14 Cal. 242.

7. Where stock is transferred to secure a debt, and is still in the hands of the transferee, and plaintiff avers that the stock is worth more than the debt, and that defendant has received from dividends more than enough to pay it, equity has jurisdiction to compel an account, prevent a transfer and delivery of the stock. *Id.*

8. The clause in such instrument "I hereby sell, transfer, and set over. . . . all my right, title, and interest to the said. . . . stock, provided I fail to pay. . . . the above sum. . . . on the day the same becomes due and payable," does not make it a conditional sale, there being no money given or agreed to be given for the stock, and no agreement to take it at any price at the time of the contract. *Id.*

9. A mortgagee of stock in such case does not get an absolute title to the stock by the mere default of payment of the mortgage debt. *Id.*

10. Under the chattel mortgage act of 1857 a mortgage of shares of stock in an incorporated company is valid without a transfer on the books of the company as is required by the corporation act of 1853 relative to pledges

of stock by delivery of the certificates. The act of 1853 has no effect on the act of 1857. *Ede v. Johnson*, 15 Cal. 53.

11. At one time seven shares of stock in a company are pledged by defendant to plaintiff as security for a note of defendant then executed. At another time twenty more shares are pledged as security for another note of defendant then executed. In suit on the notes, and for sale of the stock, etc., the judgment was for the amount of the notes, and directed a sale of all the shares of stock, and an application of the proceeds to the payment of the judgment: *held*, that the judgment was wrong so far as it ordered a sale of the stock in gross, and an application of the proceeds to the entire indebtedness. *Mahoney v. Caperton*, 15 Cal. 313.

12. A party who purchases at Sheriff's sale stock of a corporation, knowing that the certificates of such stock have been hypothecated, is chargeable with notice of the fact and takes subject to the claim of the pledgee. Neither the incorporation act of 1850, nor that of 1853, was intended to cover such a case, but to apply only to transfers and purchases in good faith without notice. *Weston v. Bear River Co.*, 6 Cal. 425.

13. Plaintiff assigns to defendant, September 22d, two shares of stock in a mining company, stating in the assignment, "I authorize the transfer to him (defendant), with all the dividends made after the morning of the twenty-third of September." Both parties expected a dividend on Monday the 22d. The trustees did not, in fact, declare a dividend until between noon and one o'clock on Tuesday: *held*, that the dividends belonged to plaintiff; and that parol evidence was admissible to explain the transaction and point out its meaning. *Brewster v. Lathrop*, 15 Cal. 21.

SEC. 10. The trustees shall have power to call in and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none is published there in some newspaper nearest to such place. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction, to the highest bidder, after a notice of thirty days

published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares, shall be deemed the highest bidder.

(*Query*—Whether this section is not repealed by Sec. 15 of the Act of April 4th, 1864, entitled “An Act concerning Assessments upon the Stock of Corporations.”)

1. Plaintiff and others owned and worked a mining claim from 1855 to 1858, when they formed themselves into a corporation with twenty-one shares of stock at one hundred dollars each; and from that time the claim was held as corporate property. The corporation levied assessments on the shares of stock, of which plaintiff owned one; and plaintiff failing to pay, sold his share at public auction. He now sues the corporation for an undivided one twenty-first part of the mining claim: *held*, that plaintiff has mistaken his remedy; that if the corporation had no power to forfeit his stock and hence it was improperly sold, he may maintain an action for its recovery, but not for a specific interest in the claim—not being in a position to question the title of the corporation, particularly as the property is a mining claim and could only be held by occupation and possession. *Smith v. Maine Boys' Tunnel Co.*, 18 Cal. 111.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

#### Right of Surviving Partner to Vote.

1. A surviving partner has a right to vote at an election for officers of a corporation, formed under the general incorporation act of this State of 1853, the stock in his hands as assets of the partnership, the business of the firm being unsettled. *People v. Hill*, 16 Cal. 114.

2. The fact that a portion of the stock voted by such surviving partner stood upon the books of the corporation at the time of the election, in the name of the deceased partner alone, does not affect the right to vote if in fact the stock belonged to the partnership. *Id.*

3. *Seemle*, upon principle, that the real owner of stock in such corporations is entitled to represent it at the meetings of the corporation, and the mere fact that he does not appear as the owner upon the books of the company should not absolutely exclude him from the privilege of so doing. *Id.*

4. The New York cases, establishing a different doctrine, are based upon a statute making the books of the corporation the only evidence as to ownership of the stock. *Id.*

SEC. 12. Any stockholder may pledge his stock by a deliv-

ery of the certificates or other evidence of his interest, but may nevertheless represent the same at all meetings and vote accordingly as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation; nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out, or reduced; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in; and in case of any excess, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those who were not present when the same did happen, shall, in their individual and private capacities, be liable jointly and severally to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

SEC. 15. No corporation organized under this act shall, by



any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt for circulation as money.

#### Power to issue Bills or Notes.

1. The clear object of the restriction of issuing bills, notes, etc., by any corporation, is to prevent them by any device from carrying on the business of banking; or, in other words, to prevent the formation of moneyed corporations; but it does not prevent them from issuing bills or evidences of indebtedness for moneys borrowed by them. *Magee v. Mokelumne Hill C. and M. Co.*, 5 Cal. 259.

2. The power to issue bills or notes as a circulating medium is expressly excluded by the statute; the right to issue them in all proper cases must be inferred as incident to the expressed powers or objects of the corporation. *Smith v. Eureka Flour Mills*, 6 Cal. 1.

SEC. 16. (*As amended by Act of April 27th, 1863—Stat. 1863, p. 736.*) Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company, contracted or incurred during the time that he was a stockholder, for the recovery of which, joint or several actions may be instituted and prosecuted. In any such action, whether joint or several, it shall be competent for the defendant or defendants, or any or either of them, on the trial of the same to offer evidence of the payment, by him or them, or any or either of them, of any debts or liabilities of such corporations, and, upon proof of such payment, the same shall be taken into account and credited to the party or parties making such payment, and judgment shall not be rendered against the party or parties defendant proving such payment for a sum exceeding the amount of his or their proportion of the debts and liabilities of such incorporations, after deducting therefrom the sums proven to have been paid by him, them, or any or either of them, on account thereof.

#### Personal Liability.

1. Each corporator is a principal debtor, and not a mere surety for the corporation; and in relation to the creditors of the corporation stands on the same footing as if it were an ordinary partnership. *Mokelumne Hill C. and M. Co. v. Woodbury*, 14 Cal. 265.

2. Under the Constitution and laws of this State, each member of a private incorporated company is answerable personally for his proportion of the debts and liabilities of the company. *Id.*

3. Persons dealing with a corporation have the right to waive, by special contract or in any other proper mode, all claim upon the personal liability of the stockholder, or to limit or qualify the extent of that claim. The fact that such claim is founded upon a constitutional provision can make no difference. *Robinson v. Bidwell*, 22 Cal. 379.

#### Service of Summons.

1. In a suit against a corporation, the summons must be served on one of the officers or agents named in the practice act. *Aiken v. Quartz Rock Co.*, 6 Cal. 186.

2. Service on a party in possession of property, who does not appear to be one of the officers named, will not entitle the plaintiff to a judgment by default. *Id.*

3. Where, in an action against a corporation, the return of the Sheriff showed that he had served the summons in the action "upon James Street, one of the proprietors of the company:" *held*, that it was not sufficient evidence of service to give the Court jurisdiction: it not appearing that Street was president, or head of the corporation, or secretary, cashier, or managing agent thereof. *O'Brien v. Shaw's Flat and Tuolumne Canal Co.*, 10 Cal. 343.

4. A Sheriff's return on the summons against a corporation, that he served the same on the president and secretary of the company, is *prima facie* evidence that the persons named in the return were such officers. *Rove v. Table Mountain Table Co.*, 10 Cal. 441; *Wilson v. Spring Hill Quartz M. Co.*, 10 Id. 445.

#### Competency of Witnesses.

1. A person who has been a stockholder in an incorporated company, but ceased to be such holder before suit was brought, is a competent witness in an action in the name of such company. *Tuolumne County W. Co. v. Columbia and Stanislaus W. Co.*, 10 Cal. 193.

2. In an action against a corporation, a witness who was a member of the corporation when the liabilities were incurred on which the action is brought, but who had sold out before the commencement of the action, is incompetent from interest. *McAuley v. York Mining Co.*, 6 Cal. 80.

3. A party who permits himself to stand on the books of a water company, incorporated under the statutes of this State, as a stockholder, and holds the office of secretary—to which no person but a stockholder is eligible—is not a competent witness for the company in an action against it for overflowing plaintiff's mining claim. He is liable for the debts of the company, and therefore interested. *Wolf v. St. Louis Ind. Water Co.*, 15 Cal. 319.

4. The fact that the stock was held in his name in trust for another—the transfer having been made simply to enable him to become an officer of the company—does not relieve him from responsibility. The trust in such case is only implied; and the seventeenth section of the corporation act of 1853 applies only to the trustee of an express trust. *Id.*

5. A member of the incorporation at the commencement of a suit brought by it, cannot become a witness for it on the trial by selling out his shares of stock after suit brought. He is personally liable for his proportion of the costs: and his competency as a witness can only be restored by actual payment of the entire costs of the case—those due and those to become due. *Mokelumne Hill C. and M. Co. v. Woodbury*, 14 Cal. 265.

6. In an action by a company of miners to recover possession of a mining claim and damages for its detention, a person who was a member of the company at the time of the alleged detention, and who prior to the commencement of the suit, in consideration of unpaid assessments, sold his interest to his copartners in the claim, without warranty, is not a competent witness, as he is interested in the damages sought to be recovered. *Packer v. Heaton*, 9 Cal. 571.

7. A witness in an action for a mining claim, who is in the employ of the party in possession, at fixed wages, to be paid from the proceeds of the claim, is not incompetent when his pay is not dependent on such proceeds. *Live Yankee Co. v. Oregon Co.*, 7 Cal. 40.

8. In an action for damages for diversion of water from plaintiff's ditch, the deposition of one of the owners in the ditch was taken by plaintiff, and subsequently, and before the trial, the witness conveyed his interest to plaintiff: *held*, that such conveyance did not pass the witness' right to the damages, and hence he was incompetent as a witness. *Kimball v. Gearheart*, 12 Cal. 27.

9. In an action of trespass for entering upon the mining ground of plaintiff, the vendor of plaintiff is a competent witness, although part of the purchase money is still due him. *Rowe v. Bradley*, 12 Cal. 226.

#### Actions against Corporations, Etc.

1. The right of a member of an incorporated company to sue the corporation is undoubted. *Barnstead v. Empire Mining Co.*, 5 Cal. 299.

2. Where there is nothing in the constitution of a joint stock company which regulates the remedies of the shareholders as between themselves, the general law of partnership must govern them. *Bullard v. Kinney*, 10 Cal. 63.

3. The code made no distinction between the rules of pleading applicable to natural persons and those applicable to artificial persons. *S. F. Gas Co. v. San Francisco*, 9 Cal. 467.

4. Where a decree rendered in a suit against a corporation contained a direction for the sale of the interest of individuals not parties to the suit, and from such decree the corporation alone appealed: *held*, that the corporation could not take advantage of the error in the decree in embracing individuals. *Dennis v. Table Mountain W. Co.*, 10 Cal. 369.

5. In an action to restrain the issuing of bonds by a corporation, the person to whom the bonds are to be issued are necessary parties to such action. *Hutchinson v. Burr*, 12 Cal. 103; *Patterson v. Supervisors of Yuba Co.*, 12 Id. 106.

6. Where, on suit against defendants as members of a quartz company, one defendant pleads that he was not a member of the company, and the finding of the Court is that the allegations of the complaint are true, and

that said defendant was a member of the company as to plaintiff Parke, the finding supports a judgment for plaintiff. *Parke v. Hinds*, 14 Cal. 417.

7. The rule requiring all persons materially interested to be made parties to a suit is dispensed with, when it is impracticable or very inconvenient, as in cases of joint associations composed of numerous individuals. *Gorman v. Russell*, 14 Cal. 539.

8. The allegation that plaintiff was a corporation under the laws of this State, is sufficient to establish the right to sue under the first section of the act concerning corporations. *Cal. Steam Nav. Co. v. Wright*, 6 Cal. 261.

9. The code imposes upon the defendant, if a corporation, by its officers and agents the duty of acquiring the requisite knowledge or information respecting the matters alleged in the complaint, to enable them to answer in the proper form. *San Francisco Gas Co. v. City of San Francisco*, 9 Cal. 467.

10. In suit by a stockholder against a corporation and its officers, praying for their removal, and for an account and settlement of the affairs of the corporation, the decree, after a full hearing on the merits, was in accordance with the prayer, and also appointed a receiver to take charge of the property of the corporation until the further order of the Court, collect money due or to become due it, sell certain stock, and pay the certain proceeds in accordance with the decree, etc.: *held*, that this provision in the decree does not destroy its effect as a final decree, and that an appeal lies therefrom. *Neall v. Hill*, 16 Cal. 145.

#### Liability of Corporations.

1. N., the president and managing agent of a corporation for ditch and mining purposes, and who was vested by a resolution of the company with discretionary powers as to "all matters pertaining to the prosecution of the projects of the company," and who had been in the habit of making such contracts as he deemed necessary for the good of the corporation, purchased of plaintiff and one S. in the name and for the use of the corporation a house to be used as an office for the company, and a boarding house for the laborers employed, for three thousand dollars, five hundred dollars of which N. paid down, and gave a mortgage on the premises in the name of the corporation to secure the balance. N. then, as agent, took possession of the premises, and, subsequently, several meetings of the company were held in the house. Six weeks after the purchase, at a meeting of the trustees, a resolution was offered and rejected, declaring the contract legal and valid. Subsequently the premises were destroyed by fire. The present plaintiff, who had obtained S.'s interest in the debt, brought suit against the corporation to recover the amount, and for a foreclosure of the mortgage: *held*, that N. had authority to make the contract to bind the corporation; and if such authority were doubtful, the acts of the corporation amounted to a ratification of the contract. *Shaver v. Bear River and Auburn W. and M. Co.*, 10 Cal. 396.

2. It does not follow, because an agent purchases property which is not absolutely necessary for the purposes of the corporation, that the latter can, after receiving the property, avoid the payment of the purchase money. *Id.* 400.

3. Where the president of a corporation has the alleged power to make a

contract for the corporation, though his authority be doubtful, yet the subsequent acts of the company may amount to a ratification. *Id.*

4. A corporate act is not essential in all cases to fasten a liability, and if it were necessary, the law would sometimes presume, in order to uphold fair dealing and prevent gross injustice, the existence of such act, and estop the corporation from denying it. *San Francisco Gas Co. v. City of San Francisco*, 9 Cal. 453.

5. Where the contract is executory, the corporation cannot be held bound unless the contract is made in pursuance of the provisions of its charter; but where the contract has been executed and the corporation has enjoyed the benefit of the consideration, an implied assumpsit arises against it. *Id.*

6. Where a draft is drawn by the president and secretary of a corporation upon its treasurer, no notice of presentation and non-payment is necessary to hold the corporation. The draft, in such case, is only an order of the corporation upon itself. *Dennis v. Table Mountain Water Co.*, 10 Cal. 369.

7. An incorporated company is not bound by the acts or admissions of its members, unless acting by its express authority. *Shay v. Truolumne W. Co.*, 6 Cal. 73.

8. A corporation may bind itself by a note and mortgage, made by its president and secretary, and signed by them in their official capacity as such. *Rove v. Table Mountain Water Co.*, 10 Cal. 441.

9. Where the promissory note of a corporation, executed by its officers, provides that only the assets of the corporation, and none of the property of stockholders, shall be liable, the corporation cannot raise the objection as affecting its own liability. *Smith v. Eureka Flour Mills*, 6 Cal. 1.

10. Where the charter of a hospital was repealed and a charter granted to a new one, and the officers of the former were directed to deliver to the trustees of the latter "all the property, real and personal, held by them in trust and for the old institution, and that the latter should pay out of the funds in his hands all the debts owing by the old one: held, that the new corporation was bound to pay all such debts, without regard to the sufficiency of the fund derived from the corporation. *Johnson v. State Marine Hospital*, 2 Cal. 319.

#### Compensation of Officers.

1. In suit by a stockholder in a private corporation against the corporation and four of the trustees, who owned stock sufficient to enable them to control the business of the company, for an account and settlement of its affairs, alleging fraud and mismanagement on the part of the trustees, the Court below, by its decree, deprived one of said trustees of his salary as superintendent of the business of the corporation: held, that this was error; that although such superintendent was also trustee and treasurer of the corporation, contrary to a positive provision of the by-laws; and although, in the management of these officers, no attention had been paid to the by-laws and regulations of the corporation, yet as no fraud was shown, and as the superintendent had faithfully performed his duties as such, he was entitled to his salary. *Neall v. Hill*, 16 Cal. 145.

2. In an action against a corporation by one of its members, upon an implied contract for the value of services as secretary, it is competent for

the defendant to show that by the usage and custom of the corporation no compensation was chargeable for such services. *Fraylor v. Sonora Mining Company*, 17 Cal. 594.

3. If such usage existed, plaintiff's position as a member and officer of the corporation is sufficient *prima facie* evidence to charge him with a knowledge of its existence; and the inference would be that he accepted the office and performed its duties without expecting compensation. *Id.*

4. The president of a corporation, who is also a stockholder, is, in the absence of any usage of the company to the contrary, entitled to compensation for his services as president. If the rate is not fixed by special contract, he is entitled to what his services are reasonably worth. *Rosborough v. The Shasta River Canal Co.*, 22 Cal. 556.

5. An understanding, not amounting to an agreement, between a corporation and its president that he should receive pay for his services is competent evidence to rebut any presumption that he was serving gratuitously. *Id.*

6. The plaintiff acted for two yearly terms as president of the defendant, a corporation, with an understanding that he should be paid, but without any agreement to that effect, or as to the amount of compensation. Having been reëlected, the trustees on the same day made an order as follows: "Ordered, that the compensation of the president of the board of trustees be established at fifty dollars per month;" and plaintiff continued to serve for two years longer: *held*, that the order was an agreement by the corporation to pay for plaintiff's past as well as future services, at the rate of fifty dollars per month. *Id.*

#### Liability of Trustees.

1. Where four of the trustees of a private corporation, owning sufficient stock to control its business, conduct the business in a grossly negligent manner, systematically disregarding the by-laws, keeping no account of receipts and expenditures, failing to pay their own assessments, without any excuse: *held*, that a stockholder may sue in equity for an account, making the corporation and said trustees alone parties—no objection being taken that all the stockholders were not parties—and the trustees will be compelled to make good any loss occasioned by their negligence or improper conduct. *Neall v. Hill*, 16 Cal. 145.

2. If in such a case any loss was sustained by the corporation from disregard of its by-laws and regulations, the amount of such loss would seem to be the measure of relief. *Id.*

3. Hence, in this case it was error in the Court below to appoint a receiver and decree a sale of the property and a settlement of the affairs of the corporation. Such decree necessarily results in the dissolution of the corporation, and would be doing indirectly what the Court has no power to do directly. *Id.*

4. To charge the officers of a corporation with a loss sustained by a stockholder, in a diminution of the value of the stock, alleged to have been caused by their mismanagement, it should appear very clearly that the loss was occasioned by their gross negligence or willful misconduct. *Id.*

5. The aid of Courts can be invoked only as against such officers as are intrusted by law with the management of the affairs of the corporation; and as against these, the remedy is at law and not in equity. *Id.*

6. A Court of Equity has no jurisdiction over corporations for the purpose of restraining their operations or winding up their concerns. Such Court may compel the officers of the corporation to account for any breach of trust; but the jurisdiction for this purpose is over the officers personally and not over the corporation. *Id.*

7. James Harter and S. N. Stranahan were sued as joint makers with the Ocean Mining Company of a note in the following form: "Three months after date the Ocean Mining Company promise to pay to W. G. Bright, or order, one thousand dollars for value received, with interest at the rate of two per cent. per month. (Signed) James Harter, Trustee, S. N. Stranahan." Judgment by default was rendered against the company and H. and S.: *held*, that this judgment was erroneous; that the instrument itself showed the intention of H. and S. to bind the company and not themselves, and that they were not personally liable. *Shaver v. Ocean Mining Co.*, 21 Cal. 45.

8. Where a bond, made in connection with a mortgage to secure the debt of a corporation was signed by four persons, who neither described themselves as agents of the corporation, nor designated anywhere therein the corporation as the party intended to be bound; *held*, that the instrument was upon its face the personal obligation of the parties signing, and that extrinsic evidence of their official character, or of their intentions was inadmissible for the purpose of showing it to be the bond of the corporation. *Richardson v. Scott River W. & M. Co.*, 22 Cal. 150.

SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been, if he had been living and competent to act and hold the stock in his own name.

SEC. 18. It shall be the duty of the trustees of every company incorporated under this act, to cause a book to be kept containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; which book, during the usual

business hours of the day, on every day except Sunday and the Fourth of July, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having charge of such book, a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or against any one or more stockholders.

SEC. 19. If the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or to allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom; and for neglecting to keep such book for inspection as aforesaid the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect—to be sued for and recovered in the name of the people by the District Attorney of the county in which the principal place of business of the corporation is located.

SEC. 20. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and



reduced so as not to exceed the diminished amount of capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of the capital stock.

SEC. 22. If at any meeting so called a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed, as required by the second section of this act; and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 23. Upon the dissolution of any corporation formed under this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts; settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the County Judge of the county in which the meetings of the trustees are usually held, a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a general or special meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation; notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for four weeks, or if no newspaper is published in the county, by advertisement posted up for thirty days in three of the most public places in the county. At the time and place appointed, or any other to which [it] may be postponed by the Judge, he shall proceed to consider the application, and, if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

1. A joint stock mining association was formed in New York for the purpose of mining in California, which company was to continue several years, with a prohibition against dissolution within one year after the arrival of the company in California, except on certain conditions, which had not been complied with: *held*, that a portion of the company could not dissolve the company at their will and pleasure, but it being found impracticable to keep the company together, the Court decreed a dissolution and a distribution of the effects of the company. *Von Schmidt v. Huntington*, 1 Cal. 70.

2. The stock being divided into money shares and labor shares, the holders of the latter, who had contributed no capital towards the outfit of the company, had performed no labor beneficial to the company, and had their expenses to California paid out of the funds contributed by the holders of the money shares alone, and had abandoned the association, which fact, by the articles, worked a forfeiture of the labor shares: *held*, that the assets of the company should be distributed among the holders of the money shares alone, and that the Court could not relieve them from the forfeiture. *Id.*

SEC. 25. The fifth chapter of "An Act concerning Corporations," passed April 22d, 1850, is repealed; but this

repeal shall not be construed to destroy the existence of any company already formed under the provisions of said chapter, nor to affect any right acquired or liability incurred under the same; but as to all such companies, the provisions of said chapter shall continue in full force, except in those instances in which any company heretofore incorporated may avail itself of the provisions of the next section of this act.

SEC. 26. Any company incorporated under the said fifth chapter of "An Act concerning Corporations," passed April 22d, 1850, may continue its corporate existence under this act by adopting a resolution to that effect by a vote of two-thirds of all the stockholders, and filing a certificate thereof, signed by its proper officers, in the office of the Secretary of State and of the County Clerk of the county in which is located the principal place of business of the corporation. From the time of filing the certificate, the corporation shall be subject only to the provisions of this act, but the change so made shall not affect any right acquired or liability incurred previously by the corporation.

SEC. 27. Corporations formed under this act, and the members thereof, shall not be subject to the conditions and liabilities contained in an act entitled "An Act concerning Corporations," passed April 22d, 1850.

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#### SUPPLEMENTARY ACT.

*AN ACT supplementary to an Act entitled "An Act to provide for the formation of Corporations for certain purposes," passed April 14th, 1853.*

[Approved March 27th, 1857.—Wood's Dig. p. 123; Stat. 1857, p. 121.]

SECTION 1. It shall be the duty of the trustees of every company, incorporated under this act for the purpose of

ditching, mining, or conveying water for mining purposes, to cause a book to be kept, containing the names of all persons, alphabetically arranged, who are, or shall become stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; also a book or books, in which shall be entered at length, in a plain and simple manner, all by-laws, orders, and resolutions of the company and board of trustees, and the manner and time of their adoption, which books, during the business hours of the day, Sundays and Fourth of July excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company; *provided*, that the office and books of every such company shall be kept, and the books of the company shall be open, as aforesaid, in the county in which their business is transacted, and every stockholder or creditor, as aforesaid, or their agents, or attorneys shall have the right to make extracts from such books, or upon payment of reasonable clerk's fees therefor, to demand and receive from the clerk or other officer having the charge of such books, a certified copy of any entry made therein; such book or certified copy of any entry, shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or any one or more stockholders.

SEC. 2. If the clerk or other officer having charge of such book, shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to

the party injured a penalty of two hundred and one dollars, and all damages resulting therefrom, to be recovered in any Court of competent jurisdiction in this State; and for neglect to keep such book for inspection, and at the place provided for in last section, the corporation shall forfeit to the people of the State of California the sum of two hundred and one dollars for every day they shall so neglect; to be sued for and recovered before any Court of competent jurisdiction in the county in which the principal business of such company is transacted; and it shall be the duty of the District Attorney within and for such county to prosecute such action, in the name of and for the benefit of the people of the State of California. And it is further provided, that in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act, to comply with the provisions of this and the preceding section, then, upon the showing of such facts, by petition of any person aggrieved thereby, and due proof thereof, before the County Judge of the county in which such company's principal business is transacted, after such company shall have been duly notified thereof, by summons, to be issued by said Judge, citing such company to appear before such Judge, at a time and place therein mentioned, which shall not be less than ten or more than thirty days from the date of such summons, such company shall, by said Judge, be declared and decreed to be disincorporated, so far as to deprive said company of all the privileges of this act, but in no manner to affect the remedy of all persons against such company, to be exercised as this act provides; *provided*, that nothing contained in the provisions of this section, concerning the disincorporating of such companies, shall be so construed as to prevent the enforcement of the other remedies in this section mentioned, at any time after the passage of this act, except as herein provided.

**ASSESSMENTS UPON STOCKS OF CORPORATIONS.***AN ACT Concerning Assessments upon the Stock of Corporations.*

[Approved April 4th, 1864; Stat. 1863-4, p. 402.]

SECTION 1. The trustees of any corporation, formed under the general laws of this State, shall have power to levy and collect, for the purpose of paying the proper and legal expenses of such corporation, assessments upon the capital stock thereof in the manner and form and to the extent hereinafter provided, and not otherwise.

SEC. 2. No assessments shall exceed five per cent. of the capital stock of the corporation, and none shall be levied while any portion of any previous assessment shall remain unpaid or uncollected, except in cases where all the powers of the corporation shall have been exercised in accordance with the terms of this act for the purpose of collecting such previous assessment, and except also the collection of a previous assessment against one or more stockholders restrained by injunction or otherwise, in which case further assessment may be levied and collected according to this act.

SEC. 3. No assessment shall be levied except by order of the board of trustees, concurred in by a majority of said board, and entered upon the records of the corporation.

SEC. 4. Every order levying an assessment shall specify the amount thereof and the time when the person or persons to whom and the place or places where the same is payable. It shall also appoint a day for the advertisement of the delinquent list, which shall not be less than thirty nor more than thirty-five days from the time of the making of such order; and a day for the sale of delinquent stock, which shall not be less than ten nor more than twenty days from the time appointed for the advertisement of the delinquent list.

SEC. 5. Upon the making of such an order the Secretary

shall cause to be published immediately a notice thereof in the following form :

“ [Name in full. Location of works.] Notice is hereby given that at a meeting of the trustees of said company, held on the [date] an assessment of [amount] per share was levied upon the capital stock of said company, payable [when, to whom, and where, particularly]. Any stock upon which said assessment shall remain unpaid on the [day fixed] will be advertised on that day as delinquent, and unless payment shall be made before will be sold on the [day appointed] to pay the delinquent assessment, together with costs of advertising and expenses of the sale. [Signature of the Secretary, with particular location of office.] ”

SEC. 6. Said notice shall be published once each week for four successive weeks, in some daily or weekly paper published at the place designated in the articles of corporation as the principal place of business of the corporation, and also in some paper published in the county in which the works of the corporation are situated, if a paper be published therein ; *provided*, that if the works of the corporation are not situated within some State or Territory of the United States, then publication in a paper of the county shall not be necessary ; and *provided*, also, that if there is no paper regularly issued on Saturdays at any place where publication is required to be made, the notice may be published in every issue of the paper which is most frequently issued at such place, for the full period of four weeks ; and *provided*, also, that if there is no newspaper published at that place designated as the principal place of business of the corporation, then the publication shall be made in the newspaper published nearest thereto ; and *provided*, also, that the notice specified in the fifth section of this act may be served by delivering a copy thereof, certified by the Secretary, to each stockholder personally ; and in case of such service upon all the stockholders of said corporation,

then no notice by publication shall be necessary, and such personal notice shall be deemed complete.

SEC. 7. If any portion of the assessment mentioned in said notice shall remain unpaid on the day specified therein for the publication of the notice of sale, the secretary shall, unless otherwise ordered by the board of trustees, cause to be published in the same papers in which the notice provided for in section five shall have been published, a notice substantially in the following form :

“ [Name in full. Location of works.] *Notice.*—There is delinquent upon the following described stock, on account of assessment levied on the [date, and assessments levied previous thereto, if any], the several amounts set opposite the names of the respective shareholders, as follows: [Names, number of certificates, number of shares, amount.] And in accordance with law, and an order of the board of trustees, made on the [date, if any such order shall have been made] so many shares of each parcel of said stock as may be necessary will be sold at the [particular place], on the [date], at [the hour] of said day, to pay said delinquent assessments thereon, together with costs of advertising and expenses of the sale. [Name of the Secretary, with particular location of office.] ”

SEC. 8. Said last named notice shall state every certificate of stock separately, with the number of shares which it represents and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and the amount due thereon, together with the fact that the certificates for such shares have not been issued, shall be stated.

SEC. 9. Said notice, when published in a daily or weekly paper, or in both, shall be published as follows: When published in a daily paper, the same shall be published for a period of ten days, excluding Sundays and holidays, previous



to the day of sale; when published in a weekly paper, the same shall be published for two weeks previous to the day of sale, the first publication in the weekly being at least fourteen days prior to the day of sale.

SEC. 10. By the publication of the said notices, as hereinbefore provided, the corporation shall acquire jurisdiction to sell and convey a full, complete, perfect and absolute title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising shall remain unpaid at the hour appointed for the sale, but shall sell no more of such stock than is necessary to pay the assessments due and cost of sale.

SEC. 11. On the day and at the place, and as nearly as may be at the hour appointed in the notice of sale, the secretary shall, unless otherwise ordered by the board of trustees, sell, or cause to be sold, at public auction, to the highest bidder for cash, so many shares of each parcel of said described stock as may be necessary to pay the assessment and charges thereon according to the terms of said notice of sale; *provided*, that if payment be made before the time fixed for [the] sale the party paying shall only be required to pay the actual cost of advertising.

SEC. 12. The person offering at such sale to pay the assessment and costs for the smallest number of shares, or fraction of a share, shall be deemed the highest bidder.

SEC. 13. The times fixed in any notice published according to the provisions [of this act] may be once extended for a period of not more than ten days, by order of the board of trustees duly made and entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice shall be effectual, unless notice of such extension or postponement be appended to and published with the notice to which [the] order relates before the completion of the regular course of publication thereof.

SEC. 14. No assessment duly levied shall be rendered invalid by a failure to make proper publication of the notices hereinbefore provided for, nor by the non-performance of any act required to be performed in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, shall be void and publication shall be begun anew.

SEC. 15. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed; *provided*, that such repeal shall not affect proceedings commenced for the collection of assessments heretofore levied, but all such assessments may be collected in accordance with the provisions of the laws then in force.

SEC. 16. This act shall take effect immediately.

*AN ACT in reference to Corporations organized in this State for the purpose of Mining out of this State.*

[Passed March 5th, 1861; Stat. 1861, p. 41.]

SEC. 1. That it may be lawful for any corporation organized in this State, under the laws of this State, for the purpose of mining, or carrying on mining operations without this State, whose business office is in this State, to levy assessments upon the capital stock thereof to pay the debts, future or present, of said corporation, or to carry on the business of said corporation; *provided*, the same shall be equal and uniform, and at no one time exceed five per cent. of the capital stock, and such levy, or assessment, shall constitute a valid and binding obligation upon the holders of such stock to pay the sum so assessed against the stock so held. Notice of each such call, or assessment, shall be given to the respective stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, and also in some newspaper published nearest to the point where said mining operations are being carried on. If, after such notice has been given, any stockholder shall make default in the payment of such call, or assessment, as to the shares of stock held by him, so many of such shares may be sold as will be necessary for the payment of the call, or assessment, on the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction to the highest bidder, after a published notice of thirty days, published as above directed; and that at such sale the person who will agree to pay the call, or assessment, so due, together with the expense of advertisement and the other expenses of the sale for the smallest number of whole shares, shall be deemed the highest bidder.

(*Query*—Whether this act is not repealed by Sec. 15 of the act of April 4th, 1864, entitled "An Act concerning Assessments upon the Stock of Corporations.")

## PARTNERSHIPS FOR MINING PURPOSES.

*AN ACT concerning Partnerships for Mining Purposes.*

[Approved April 4th, 1864; Stat. 1863-4, p. 478.]

SECTION 1. All written contracts of copartnership for mining purposes upon the lands of the United States within this

State, formed by two or more persons, shall be subject to the conditions and liabilities prescribed by this act.

SEC. 2. Any member of a copartnership, or his successor in interest, in any mining claim, who shall neglect or refuse to pay any assessment, or shall neglect to perform any labor or other liability incurred by the copartnership agreement, may, after the expiration of sixty days after such assessment, labor, or other liability has become due, be notified in writing by any remaining partner or partners, or by his or their agents, that such assessment, labor, or liability is due, which written notice shall specify the name of such mine and the district wherein it is located, and shall particularly mention the liability which has been incurred; and if such delinquent reside within the State, he shall be personally served with such notice; and if the person so notified shall refuse or neglect, for thirty days after service of such written notice, to comply with the requirements of the copartnership agreement, the remaining partner or partners may sell the interest of such delinquent partner in and to such mining claim.

SEC. 3. All sales under the provisions of this act shall be at public auction and by giving five days' notice thereof, by posting written notices in three public places within the mining district where such mine is located. The notice shall also specify the extent of the interest to be sold, and the name of the delinquent partner or partners, and the time and place of such sale, which place shall be within the district where the mine is located. The purchaser at such sale shall acquire all the rights and title of the delinquent partner.

SEC. 4. If any delinquent partner in any mine is absent from the State, or resides in any other State or Territory, the notice to such delinquent shall be by publication once a week for four months in some newspaper published in the county where the mine is located; or, if there be no newspaper in the county, then such notice shall be published in

some newspaper in an adjoining county. After the expiration of the time of such publication, the interest of such delinquent shall be sold, in the manner prescribed in section third of this act.

SEC. 5. This act shall take effect from and after its passage.

#### Liability.

1. Where a mining company, not incorporated, forms a trading copartnership with an individual under a firm name, each member of the mining company is a member of the firm. *Rich v. Davis*, 6 Cal. 163.

2. Where one of the mining company acted as salesman of the firm, it cannot be pretended that he was a dormant partner whose acts would not bind the firm. *Id.*

3. In ejectment for an interest in a mining claim, the answer being a general denial, defendant cannot defeat the action by showing the claim to be partnership property. Any rights defendant may have in the premises, growing out of the partnership, must be asserted in equity, particularly as the legal title in this case is in the plaintiff. *Lowe v. Alexander*, 15 Cal. 296.

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### CHANGING PLACE OF BUSINESS.

*AN ACT to authorize Mining Companies or Corporations to change their principal place of Business.*

[Approved February 15th, 1864; Stat. 1863-4, p. 76.]

SECTION 1. Any mining company or corporation lawfully organized and incorporated for mining purposes within the State of California may change its office or principal place of business by first obtaining the consent in writing of the stockholders representing two-thirds of all the capital stock of the company; *provided*, that notice of such intended change, after such consent shall have been obtained, shall be inserted for thirty days in some newspaper published at or nearest the principal place of business of said mining company or corporation, designating the county or city and county, to which it is intended to remove, before such removal shall be deemed lawful.

SEC. 2. Any mining company or corporation availing itself

of the privileges of this act, upon filing in the office of the county clerk of the county or city and county, to which a removal is intended to be made, a certified copy of its articles of incorporation, together with a certificate of the trustees of the company or corporation, under the seal thereof, that the requirements of section one of this act have been fulfilled, shall, from the time of such filing, be vested with all the powers in its new place of business which it might or could have exercised if originally incorporated in the county to which its office or principal place of business shall be removed.

SEC. 3. This act shall not be so construed as to authorize any mining company or corporation to remove its office or principal place of business out of the State.

SEC. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage.

#### REMOVAL OF OFFICES FROM AURORA, N. T.

*AN ACT to authorize the removal of the Office and principal place of Business of Mining and other Corporations, from the town of Aurora in the Territory of Nevada to the City of San Francisco, or other places in the State of California.*

SECTION 1. It is hereby declared lawful for any Corporation heretofore organized under the laws of this State, whose principal place of business is in the town of Aurora, Territory of Nevada, and such Corporation is hereby authorized and empowered to remove its office and principal place of business to the city of San Francisco, or to any other city or town in the State of California, as such Corporation may select by a resolution of the Board of Trustees thereof adopted in accordance with its By-laws.

SEC. 2. Every such Corporation desiring to make such removal shall file in the office of the Clerk of the City and County of San Francisco, or of the City and County of Sacramento, or of such County in this State wherein is situated the city or town to which such Corporation desires to remove, a certified copy of such resolution, under their Corporate Seal, together with a certified copy of the original Certificate of Incorporation now on file in the office of the Secretary of State, and shall also deliver a certified copy of such resolution to the County Clerk of Esmeralda County, Nevada Territory, and shall cause the same to be published for four successive weeks in some newspaper in the said town of Aurora; and from the time of the filing of the said instruments in the Clerk's office of the proper county in this State, the office and principal place of business of such Corporation shall be deemed removed to and established at such city or town in this State as may be declared in such resolution.

SEC. 3. The resolution heretofore passed by the Board of Trustees of any Corporation, whose office and principal place of business has heretofore been in the town of Aurora, removing such office and place of business to any city or town in the State of California, is hereby legalized and declared valid and effectual; and from the time of the passage of such resolution, all acts and proceedings of the Trustees of such Corporation, had or done in such city or town in this State, are hereby declared and made valid and effectual, in law and equity, as fully to all intents and purposes as though such city or town had been originally designated in the Certificate of Incorporation of such Corporation as the principal place of business thereof; *provided*, that such Corporation shall, within sixty days from the passage of this act, file in the office of the County Clerk of the county wherein such city or town is situated, a certified copy of such Resolution, attested by their Corporate Seal, together with a certified copy of the Certificate of Incorporation of said Corporation now on file in the office of the Secretary of State.

SEC. 4. This act shall take effect from and after its passage.

[This bill having remained with the Governor ten days (Sundays excepted) and the Senate and Assembly being in session, it became a law February 27th, 1864; Stat. 1863-4, p. 109.]

**TRANSFER AGENCIES.**

*AN ACT to authorize Corporations organized in this State for the purpose of Mining in or without this State, to establish and maintain Transfer Agencies in other States.*

[Approved April 4th, 1864; Stat. 1863-4, p. 429.]

SECTION 1. That it may be lawful for any corporation organized in this State for the purpose of mining, or carrying on mining operations in or without this State, to establish and maintain agencies in other States of the United States for the transfer and issuance of their stock, and a transfer or issuance of [the] same at any such transfer agency, in accordance with the provisions of this statute, shall be valid and binding, and as fully and effectually so, for all purposes, as if made upon the books of such corporation at its principal office within this State.

SEC. 2. All stock of any such corporation issued at any such transfer agency, shall be signed by the President and Secretary of the corporation, and countersigned at the time of its issuance by the agent or agents of such corporation having the charge of such transfer agency, and no stock shall be issued at such transfer agency, unless the certificate or certificates of stock in lieu of which the same is issued, shall, at the time of such issuance, be surrendered for cancellation.

SEC. 3. The stockholders of any such corporation may pass by-laws for the regulation and conduct of any such transfer agency; *provided*, the same be not inconsistent with the provisions of this act; and such transfer agency shall at all times be subject to the control of the trustees of said corporation.

SEC. 4. All acts, or parts of acts, inconsistent herewith are hereby repealed.

SEC. 5. This act shall take effect from and after its passage.

## CANAL COMPANIES.

*AN ACT to authorize the Incorporation of Canal Companies, and the Construction of Canals.*

[Passed May 14th, 1862; Stat. 1862, p. 540.]

SECTION 1. Corporations may be formed, under the provisions of an act entitled "An Act to provide for the formation of Corporations for certain purposes," passed April 14th, 1853, and the several acts amendatory thereof and supplemental thereto, for the following purposes: The construction of canals for the transportation of passengers and freights, or for the purpose of irrigation or water power, or for the conveyance of water for mining or manufacturing purposes, or for all of such purposes.

SEC. 2. The right is hereby granted to any company organized under the authority of this act, to construct all works necessary to the objects of the company, to make all surveys necessary to the selection of the best site for the works, and of the lands required therefor, and to acquire all lands, waters not previously appropriated, and other property necessary to the proper construction, use, supply, maintenance, repairs, and improvements of the works, in the manner and by the mode of proceedings prescribed in an act entitled "An Act to provide for the Incorporation of Railroad Companies, and the Management of the affairs thereof, and other matters relating thereto," passed May 20th, 1861. (For the Railroad Act hereby referred to see Stat. of 1861, p. 607; Stat. 1862, p. 547; Stat. 1863, p. 610.)

SEC. 3. Every company organized as aforesaid shall have power, and the same is hereby granted, to make rules and regulations for the management and preservation of their works not inconsistent with the laws of this State, and for the use and distribution of waters and the navigation of the canals, and to establish, collect, and receive rates, water rents, or

tolls, which shall be subject to regulation by the Board of Supervisors of the county or counties in which the work is situated, but which shall not be reduced by the supervisors so low as to yield to the stockholder less than one and one-half per cent. per month upon the capital actually invested.

SEC. 4. Every company organized under the authority of this act shall construct, and keep in good repair at all times, for public use, across their canal, all of the bridges that the Board of Supervisors of the county or counties in which such canal is situated shall require; said bridges being on the lines of public highways, and necessary for public use in connection with such highways.

SEC. 5. The provisions of this act shall not apply to the counties of Nevada, Placer, Amador, Sierra, Klamath, Del Norte, Trinity, Butte, Plumas, Calaveras, and Tuolumne.

#### Ditches, Canals, Etc.

1. The first appropriator of water for mining purposes is entitled to have the water flow without material interruption in its natural channel. *Bear River and Auburn W. and M. Co. v. New York Mining Co.*, 8 Cal. 333.

2. Plaintiffs owned certain mining claims and quartz leads on the bank of a stream above the mill and dam of defendant. Defendant commenced raising his dam two feet higher. Plaintiffs brought suit against defendant, alleging that the addition of two feet to defendant's dam was a nuisance, and would back the water on to plaintiffs' claims and thus prevent them from working them, and would also destroy their water privilege for a quartz mill, which they intended to construct: *held*, that the action was premature, and that the demurrer to the complaint, on the ground that the complaint did not state facts sufficient to a cause of action, was properly sustained. *Harvey v. Chilton*, 11 Cal. 120.

3. In an action for injuries to a mining claim, a claim for damages to the plaintiff by reason of the breaking away of the defendant's dam and the consequent washing away of the pay dirt of the plaintiff, may properly be joined with a claim for damages in the preventing plaintiff from working his claim. *Fraylor v. Sears U. W. Co.*, 12 Cal. 558.

4. The law will not presume an abandonment of property in a dam and ditch for mining purposes from the lapse of time. *Partridge v. McKinney*, 10 Cal. 183.

5. Where plaintiff's mining claim was overflowed by means of a dam erected by the defendants, the Court ordered a reduction of the dam, so as to prevent the overflow, or, if necessary, the entire abatement. *Ramsay v. Chandler*, 3 Cal. 93.



6. The obstruction of water in a ravine is common injury to many at work on the ravine, who had by the necessary implication of the laws of the State which relates to mines and miners, a species of property in their mining grounds which they had a right to protect by peaceably abating the nuisance. *Stiles v. Laird*, 5 Cal. 122.

7. Rights of miners are to be protected in the possession of their selected localities, and the rights of those who by prior appropriation have taken the waters from their natural beds, and by costly works to supply the necessity of gold diggers, and without which the most important interest in the main-ral region would remain undeveloped. *Irwin v. Phillips*, 5 Cal. 146.

8. Where the plaintiff sued for an injury to his mining claim, by the breaking of defendant's canal, which was constructed prior to the location of plaintiff's claim, neither party claiming ownership of the soil, and no negligence in fact being shown, other than that which the law would presume from the breaking of the ditch: *held*, that the rights of the parties were acquired at the dates of their respective locations, and the rule of "coming to a nuisance" may be applied. *Tenney v. Miners' Ditch Co.*, 7 Cal. 339.

9. There is no doubt that ditch owners would be responsible for wanton injuries or gross negligence, but they are not liable for a mere accidental injury, where no negligence is shown, to a miner locating along the line subsequent to the construction of the ditch. *Id.* 340.

10. In suits for the possession of land by ditch companies, incorporated under the act of April 14th, 1853, by the fourth section of which they are authorized "to purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require," the defendants cannot question the necessity of such lands for the purposes of the corporation. This is matter between the government and the corporation. *Natoma W. & M. Co. v. Clarkin*, 14 Cal. 544.

11. Where parties have acquired the prior right to the use of the water of a stream by the commencement and partial completion of a ditch and flume, they have the right to use so much of the waters of the stream as are necessary to preserve their flume from injury, while in the process of construction. *Weaver v. Conger*, 10 Cal. 233.

12. In an action for diverting water from plaintiff's ditch, where both parties claimed, in part, the water of the stream: *held*, that defendant is not liable for any deficiency of water in plaintiff's ditch, unless he was diverting from the stream more water than he was entitled to at the time. *Brown v. Smith*, 10 Cal. 508.

13. The owners of a ditch are bound to use that degree of care and caution in its construction and management, to prevent injury to others, which men of ordinary prudence would use when the risk was their own. *Wolf v. St. Louis W. Co.*, 10 Cal. 541.

14. The failure of one partner in a ditch to pay his proportion of expenses of the concern, does not forfeit his right in the common property. *Kimball v. Gearheart*, 12 Cal. 27.

15. When parties projecting a ditch to convey water, give notice to the world of their intention to dig such ditch and appropriate such water, in the usual manner, and designate the line of such ditch by the usual marks and

indications, and pursue the work with a reasonable degree of diligence until the same is completed, they are entitled to such water as against all persons subsequently claiming it. *Id.*

16. Surveys, notices, stakes, and blazing of trees, followed by work and labor, without abandonment, will in every case where the work is completed, give title to unclaimed water on public lands over after-claimants. *Id.*

17. The diversion of the waters of a stream with the object of drainage simply, or without the intention of applying them to some useful purpose, does not constitute an appropriation. *McKinney v. Smith*, 21 Cal. 374.

18. A mortgage upon a flume or ditch not completed but projected and in process of construction, covers the whole work when completed, if apt terms expressing that intent are used in the instrument. *Union Water Co. v. Murphy's Flat Fluming Co.*, 22 Cal. 620.

19. A flume for the conveyance of water is in the nature of real estate, and a mortgage upon it will, without any special provisions, include all improvements then upon the line of the works, and also those which may afterwards be put thereon. *Id.*

20. A loan of money upon mortgage security by a corporation organized for the purpose of constructing ditches for the conveyance and sale of water is not necessarily an act exceeding its corporate powers. Such contract, if necessary to attain its general objects and made as an incident to the exercise of its granted powers, is valid. In the absence of proof its validity will be presumed. *Id.*

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## FOR THE PROTECTION OF GROWING CROPS, BUILDINGS, ETC., ON MINERAL LANDS.

*AN ACT to protect Owners of Growing Crops, Buildings,  
and other Improvements in the Mining Districts of this  
State.*

[Passed April 25th, 1855.—Wood's Dig. p. 54; Stat. 1855, p. 145.]

SECTION 1. No person shall, for mining purposes, destroy or injure any growing crops of grain or garden vegetables growing upon the mineral lands of this State, nor undermine or injure any house, building, improvement, or fruit trees, standing upon mineral lands and the property of another, except as hereinafter provided.

SEC. 2. Whenever any person, for mining purposes, shall desire to occupy or use any mineral lands of this State, then occupied by such growing crops of grain, garden vegetables,

fruit trees, houses, buildings, or other improvements, property of another, such person shall first give bond to the owner of the growing crop, building, fruit trees, or other improvements, to be approved by a justice of the peace of the township, with two or more sufficient sureties, in a sum to be fixed by three disinterested citizens, householders of the township, one to be selected by the obligor, one by the obligee, and one by a justice of the peace of the township, conditional that the obligor shall pay to the obligee any and all damages which said obligee may sustain in consequence of the destruction by the obligor, or those in his employ, of the growing crops, fruit trees, improvements, or buildings of the obligee; *provided*, that the word improvements in this act shall be construed to mean any superstructure on said farm, ranch or garden, and nothing more.

SEC. 3. If any person or persons shall violate the provisions of the first and second sections of this act, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof before any Court of competent jurisdiction, shall be fined in a sum not exceeding two hundred dollars, nor less than fifty dollars, or by imprisonment in the county jail of said county, not exceeding three months, either or both, at the discretion of the Court; *provided*, nothing in this act shall prevent miners from working any mineral lands in the State, after the growing crops on the same are harvested.

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### PUBLIC MINERAL LANDS.

*AN ACT prescribing the mode of Maintaining and Defending Possessory Actions on Public Lands in this State.*

[Approved April 20th, 1852; Stat. 1852, p. 158; Wood's Dig. p. 526.]

Section 1 provides that "Any person now occupying and settled upon, or who may hereafter occupy or settle upon any

of the public lands in this State, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with or injuries done to his or her possessions of said land against any person or persons so interfering with or injuring such land or possession; *provided*, that if the lands so occupied and possessed contain mines of any of the precious metals, the possession or claim of the person or persons occupying the same for the purposes aforesaid shall not preclude the working of such mines by any person or persons desiring so to do, as fully and unreservedly as they might or could do had no possession or claim been made for grazing or agricultural purposes."

#### Possessory Claims on Mineral Lands.

1. The act of April 25th, 1855, "for the protection of growing crops and improvements in the mining districts of this State," so far as it purports to give a right of entry upon the mineral lands of this State, in cases where no such right existed anterior to its passage, is invalid. *Gillan v. Hutchinson*, 16 Cal. 153.

2. This act of 1855 seems to proceed upon the idea of an absolute and unconditional right in the miner to enter upon the possessions of another for mining purposes, and the intention of the act was to limit this supposed right, and not to give a right of entry in cases where no such right previously existed. Miners have no such absolute and unconditional right. The true rule is laid down in *Smith v. Doe*, 15 Cal. 100. *Id.*

3. In ejectment for mineral land, plaintiff averred possession of a large tract of land, including the mining land in controversy, and that he occupied the land for agricultural and mining purposes, without stating that any use was made of the particular portion held by defendants. This averment of possession, and also the averment of ouster, were insufficiently denied in the answer; but the answer averred affirmatively that, at the time defendants entered upon the ground in dispute, it was a part of the public domain of the United States; contained large and valuable deposits of gold; that they entered upon and took possession of it for mining purposes, and that they have since held and used it for such purposes only. The Court below gave judgment for plaintiff on the pleadings: *held*, that these affirmative averments of defendants being proved, plaintiff could not recover without showing such an actual and meritorious possession and occupancy as rendered the interference of the defendants unjust and inequitable; that he could not recover on the pleadings, because the character of his possession did not appear, the complaint not averring that this particular portion of land was ever used by plaintiff for any purpose whatever. *Smith v. Doe*, 15 Cal. 100.

4. The allegation of possession is too broad to defeat the rights of a person who has, in good faith, located upon public mineral land for the purpose of mining. *Id.*

5. When a party enters upon mineral land for the purpose of mining, he cannot be presumed to be a trespasser, for if the land be not private property he has the right to enter upon it for that purpose; and, until it is shown that the title has passed from the Government, the statutory presumption that it is public land applies. *Id.*

6. Mere entry and possession give no right to the exclusive enjoyment of any given quantity of the public mineral lands of this State. *Id.*

7. As a general rule, the public mineral lands of this State are open to the occupancy of every person who, in good faith, chooses to enter upon them for the purpose of mining. But this rule has its limitations, to be fixed by the facts of each particular case. Certain possessory rights and rights of property in the mining region, though not founded on a valid legal title, will be protected against the miner—as valuable permanent improvements, such as houses, orchards, vineyards, growing crops, etc. *Id.*

8. The act of April, 1852, "prescribing the mode of maintaining and defending possessory actions on public lands in this State," gives permission to all persons to work the mines upon public lands, although they may be in the possession of another, for agricultural purposes. *Stokes v. Barrett*, 5 Cal. 36; *Clark v. Duval*, 15 Id. 88.

9. The right of the agriculturist to use and enjoy public lands must yield to the right of the miner when gold is discovered in his land. *Tartar v. Spring Creek W. & M. Co.*, 5 Cal. 395; *Burdge v. Underwood*, 6 Id. 45.

10. But this does not confer any right upon the miner to dig a ditch to convey water to his mining claim through land thus occupied. *Id.*; *McClintock v. Bryden*, 5 Cal. 97; *Fitzgerald v. Urton*, Id. 308.

11. The Government of the United States will issue no patent to a pre-emption claimant upon mineral lands, who claims the same for agricultural purposes. *McClintock v. Bryden*, 5 Cal. 99.

12. The Government of this State being a Government of the people, has, as far as its action has been determined, modified the claim to the precious metals by the sovereign, and permitted its citizens and others to use the public lands for the purpose of extracting the most valuable metals from their soil. *Id.*

13. A person who has settled for agricultural purposes upon any of the mining lands of this State has settled upon such lands subject to the rights of miners, who may proceed in good faith to extract any valuable metals there may be found in the lands so occupied by the settler, to the least injury of the occupying claimant. *Id.* 102.

14. Miners have a right to dig for gold on the public lands. *Irwin v. Phillips*, 5 Cal. 145; *Hicks v. Bell*, 3 Id. 219.

15. The miner who selects a piece of ground to work must take it as he finds it, subject to prior rights, which have an equal equity on account of an equal recognition from the sovereign power. *Id.* 147.

16. Settlers may occupy public lands and inclose the same for their immediate benefit, except in the mining regions, else the entire gold region might have been inclosed in large tracts under the pretense of agriculture and grazing. *Tartar v. Spring Creek W. & M. Co.*, 5 Cal. 398.

17. The Government of the United States, in the face of the notorious occupation of the public lands in this State by her citizens—that upon those lands they have mined for gold, constructed canals, built saw mills, cultivated farms, and practiced every mode of industry—has asserted no right of ownership to any of the mineral lands in the State. *Conger v. Weaver*, 6 Cal. 556.

18. The right, like digging gold, is a franchise, and the attending circumstances raise the presumption of a grant from the sovereign of the privilege, and every one who wishes to attain it has license from the State to do so; *provided*, that the prior rights of others are not infringed upon. *Id.*

19. A license to work the mines implies a permission to extract and remove the mineral. Such license from an individual owner can be created only by writing, and from the General Government only by act of Congress. But Congress has adopted no specific action on the subject, and has left that matter to be controlled by its previous general legislation respecting the public domain. The supposed license from the General Government consists in its simple forbearance. *Boggs v. Merced M. Co.*, 14 Cal. 374.

20. If the forbearance of the Government were entitled to any consideration, as a legal objection to the assertion of the title of the Government, it could only be so in those cases where it has been accompanied with such knowledge on its part, of a working of the mines and the removal of the mineral, as to have induced investigation and action, had this been intended or desired. Such knowledge must be affirmatively shown by those who assert a license from forbearance. *Id.*

21. How far the right of miners to go upon public mineral lands in possession of another, for the purpose of mining, must be modified to secure any rights of such possessor, reserved. *Id.*

22. Neither the act of 1858, as to the location of seminary land, nor the act of Congress, donating it, allows mineral land to be located. *Id.*

23. Miners have a right to enter upon public mineral land, in the occupancy of others, for agricultural purposes, and to use the land and water for the extraction of gold—the use being reasonable, necessary to the business of mining, and with just regard to the rights of the agriculturist; and this, whether the land is inclosed or taken up under the possessory act. *Clark v. Duval*, 15 Cal. 88.

24. The right so to enter and mine carries with it the right to whatever is indispensable for the exercise of this mining privilege—as the use of the land and such elements of the freehold as water. *Id.*

25. The possession of agricultural land is *prima facie* proof of title against a trespasser; but where it is shown that the party goes on mineral land to mine, there is no presumption that he is a trespasser; and the statutory presumption that it is public land, in the absence of proof of title in the person claiming it as agricultural land, applies. *Burdge v. Smith*, 14 Cal. 383.

26. In this State, although the larger portion of the mineral lands belong to the United States, yet defendant cannot defeat an action for mining claims, water privileges, and the like, by showing the paramount title of the Government. Our Courts, in determining controversies between parties thus situated, presume a grant from the Government to the first appropria-

tor. The presumption, though of no avail against the Government, is held absolute in such controversies. *Coryell v. Cain*, 16 Cal. 573.

27. A miner has no right to dig or work within the inclosure surrounding a dwelling-house, corral, and other improvements of another. *Burdge v. Underwood*, 6 Cal. 45.

28. There is no prohibition against locating school land warrants on any of the mineral lands in the State. *Nims v. Johnson*, 7 Cal. 110.

29. A party cannot, under pretense of holding land in exclusive occupancy as a town lot, take up and inclose twelve acres of mineral land in the mining district, as against persons who enter afterwards upon the land, in good faith, for the purpose of digging gold, and who do no injury to the use of the premises as a residence, or for carrying on of any commercial or mechanical business. *Martin v. Browner*, 11 Cal. 12.

30. Where a miner enters upon land in the possession of another, claiming the right to enter for mining purposes, he must justify his entry, by showing: 1st, that the land is public land; 2d, that it contains mines or minerals; 3d, that he enters for the *bona fide* purpose of mining, and such justification must be affirmatively pleaded in answer, with all the requisite averments to show a right under the statute, or by law, to enter. *Lentz v. Victor*, 17 Cal. 271.

31. A party in possession of public mineral land is entitled to hold it as against all the world, the Government excepted, if the land belong to it—subject only to the qualification that, upon land taken up for other than mining purposes, a right of entry for such purposes may attach. *Id.*

32. Whether in this case, even if the defense of justification as a miner, etc., had been properly set up, defendant would have been entitled to enter, not decided. *Id.*

33. The eleventh section of the act of March, 1856, "for the protection of actual settlers and to quiet land titles in this State," does not apply to miners engaged in extracting gold from quartz veins. *Fremont v. Seals*, 18 Cal. 433.

34. The mines of gold and silver in the public lands are as much the property of the State, by virtue of her sovereignty, as are similar mines in the hands of private proprietors. *Hicks v. Bell*, 3 Cal. 227; *Stoakes v. Barrett*, 5 Id. 39.

35. The State, therefore, has the sole right to authorize the mines to be worked, to pass laws for their regulation, to license miners, and affix such terms and conditions as she may deem proper to the freedom of their use. *Id.*

#### Growing Wood and Timber.

1. The right to the use of growing wood and timber upon the public mineral lands, as between the claims of miners on the one hand and agriculturists on the other, is governed by the rule of priority of appropriation. *Rogers v. Soggs*, 22 Cal. 444.

2. The possession of public land in the mineral districts of this State, acquired and held in accordance with the possessory act for agricultural purposes, carries with it the right to the wood and timber growing thereon, and this right is superior to that of subsequent locators of mining claims

who need, and seek to use, the wood and timber for carrying on their mining operations. *Id.*

3. In an action between occupants of the public lands neither party can claim a right to the growing timber thereon under the laws of the United States. The cutting or destruction of the timber by any occupant is expressly prohibited by Act of Congress of March 2d, 1831. *Id.*

#### Private Lands.

1. The United States, like any other proprietor, can only exercise their right to the mineral on private property, in subordination to such rules and regulations as the local sovereign may prescribe. *Boggs v. Merced M. Co.*, 14 Cal. 376.

2. The general course of legislation in this State authorizes the inference of a license from her to the miner to enter upon lands and remove the gold, so far as the State has any right; but this license is restricted to the public lands. *Id.*

3. Where premises containing deposits of gold are held under a patent from the United States, an injunction lies to prevent miners from excavating ditches, digging up the soil, and flooding a portion of the premises, for the purpose of extracting the gold. *Henshaw v. Clark*, 14 Cal. 460.

4. Such injuries are calculated to destroy the entire value of the land for all useful purposes. They are irreparable. *Id.*

5. Miners have no right to enter upon private land, and subject it to such uses as may be necessary to extract the precious metals which it contains. *Id.*

6. The right to mine for the precious metals can only be exercised upon public lands, and, although it carries with it the incidents of the right, such as the use of wood and water, those incidents also must be of the public domain. *Tartar v. Spring Creek W. & M. Co.*, 5 Cal. 398.

7. The presumption of a grant from the Government, of mines, water privileges, and the like, is to the first appropriator; but such a presumption can have no place for consideration against the superior proprietor. *Boggs v. Merced M. Co.*, 14 Cal. 375; *Henshaw v. Clark*, 14 Id. 464.

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### CONVEYANCE OF MINING CLAIMS.

*AN ACT to provide for the Conveyance of Mining Claims.*

[Passed April 13th, 1860.—Wood's Dig. p. 896; Stat. 1860, p. 175.]

SECTION 1. Conveyances of mining claims may be evidenced by bills of sale or instruments in writing not under seal, signed by the person from whom the estate or interest is intended to pass, in the presence of one or more attesting witnesses; and also all conveyances of mining claims hereto-



fore made by bills of sale or instruments of writing, not under seal, shall have the same force and effect as *prima facie* evidence of sale, as if such conveyances had been made by deed under seal; *provided*, that nothing in this act shall be construed to interfere with or repeal any lawful local rules, regulations, or customs of the mines in the several mining districts of this State; and *provided*, further, every such bill of sale or instrument in writing shall be deemed and held to be fraudulent and void as against all persons except the parties thereto, unless such bill of sale or instrument in writing be accompanied by an immediate delivery to the purchaser of the possession of the mining claim or claims therein described, and be followed by an actual and continued change of the possession thereof, or unless such bill of sale or instrument in writing shall be acknowledged and recorded as required by law in the case of conveyances of real estate.

SEC. 2. This act shall apply to gold mining claims only. (*This section was repealed by Act of March 26th, 1863—Stat. 1863, p. 98.*)

#### Conveyances of Mining Claims, etc.

1. A bill of sale, not under seal, is insufficient to convey a mining claim. *McCarron v. O'Connell*, 7 Cal. 152.

[The act of April 13, 1860, permits bills of sale of mining claims, without seal, to pass title.]

2. A bill of sale for a mining claim, not under seal, and without warranty, which only purports to convey the right and title of the vendor, will not pass the title, although the vendor is in possession at the time, if such possession is without title. It only passes an equity which is subject to the legal title or a superior equity. *Clark v. McElvy*, 11 Cal. 154.

3. A written conveyance is not necessary to the transfer of a mining claim. *Table Mountain Tunnel Co. v. Stranahan*, 20 Cal. 198.

4. The right to mining ground, acquired by appropriation, rests upon possession only; and rights of this character, not amounting to an interest in the land, are not within the statute of frauds, and no conveyance other than a transfer of possession is necessary to pass them. *Id.*

5. A writing is not necessary to vest or divest title on taking up a mining claim. The right of the miner comes from the mere appropriation of the claim made in accordance with the mining rules and customs of the vicinage. The title is in the Government, and the right to mine is by its permission to the appropriator. *Gore v. McBrayer*, 18 Cal. 582.

6. The statute of frauds, requiring an instrument in writing to create an interest in land, does not apply to taking up of mining claims. A mere verbal authority to one man to take up a claim for another is sufficient. No title is divested out of the Government, but a right of entry given under it. *Id.*

7. Mining claims are real estate within the code defining the venue of civil actions. *Watts v. White*, 13 Cal. 324.

8. Upon questions as to the occupancy of public mineral land, it seems that a transfer of the occupant's right of possession may as well be by simple agreement as by deed, the vendee taking possession. *Jackson v. F. River and Gibsonville W. Co.*, 14 Cal. 22.

9. From an early period of our State's jurisprudence we have regarded claims to public mineral lands as titles. *Merritt v. Judd*, 14 Cal. 64.

10. The owner of a mining claim has, in effect, a good vested title to the property, until divested by the higher right of his superior proprietor. He is entitled to all the remedies for the protection of his mine that he could claim if he were the owner against all the world, except the true owner. *Merced Mining Co. v. Fremont*, 7 Cal. 317.

11. The purchaser of a mining claim can only acquire such right or title as his vendor had at the time of sale. *Waring v. Crow*, 11 Cal. 366.

12. Where parties conveyed to H. one-third interest in the lead, by deed purporting to convey in the fee simple absolute, and subsequently acquired another title: *held*, that such subsequent acquisition inured to H.'s benefit. *Hitchens v. Nougues*, 11 Cal. 28.

13. A bill of sale of a mining claim is sufficiently proven when the hand-writing of the subscribing witness, who is absent from the State, and the execution by the vendor are proven. It is no objection to such bill of sale that it is not under seal, whatever may be the effect of it as evidence. *Jackson v. Feather River Water Co.*, 14 Cal. 22.

#### Conveyance to and by Corporation Seal.

1. A conveyance that would come within the statute of frauds if made by an individual, if made by a corporation would be liable to the same construction, and if void in the former case would be void in the latter. Such conveyance will not affect the lien of a judgment regularly obtained against the grantor. *Smith v. Morse*, 2 Cal. 524.

2. Where the owners of a mining claim, previously located by themselves and others, became incorporated, and placed the corporation thus formed in possession of the claim as their successor in interest, with the evident intention that whatever rights the unincorporated individuals had should pass to the corporation: *held*, that the title to the claim passed to the corporation as effectually as it would if the transfer had been accompanied by a conveyance in writing. *Table M. T. Co. v. Stranahan*, 20 Cal. 198.

3. A conveyance of real property by a corporation must be under its corporate seal. It may alter its seal at pleasure, and may adopt as its own the private seal of an individual, but in the latter case the seal adopted must be used as that of the corporation. *Richardson v. Scott River W. & M. Co.*, 22 Cal. 150.

4. If to a deed, purporting to be that of a corporation, a seal be affixed as that of the individual agent who signs it, such seal cannot be treated as that of the corporation. A declaration in the instrument that the seal is affixed as that of the agent is conclusive of its character and effect. *Id.*

5. It is not necessary to state in a conveyance by a corporation that the seal used is that of the corporation. This fact may, in the absence of any declaration to the contrary, be presumed from the language of the conveyance or proved by evidence *aliunde*. *Id.*

6. A mortgage, made in connection with a bond to secure the debt of a corporation, styled the Scott River Water and Mining Company, named as parties of the first part (grantors), W. P. Pool, C. W. Tozer, G. T. Terry, and J. Reid, "President, Directors, and members of the Scott River Water and Mining Company," and concluded as follows: "In witness whereof, the said parties of the first part hereunto set their hands and affix their seals," followed by the signatures of the four persons above named with a seal or scrawl affixed to each: *held*, that this conveyance was not sealed with the corporate seal, and was therefore inoperative as the foundation of any right or claim to the corporate property which it purported to convey. *Id.*

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### LIMITATION OF ACTIONS.

*AN ACT* supplementary to the Act entitled "An Act to amend an Act defining the Time for commencing Civil Actions," passed April 22d, 1850, approved April 18th, 1863.

[Approved February 18th, 1864—Stat. 1863-4, p. 91.]

SECTION 1. No action for the recovery of property in mining claims, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within two years before the commencement of the action.

SEC. 2. No cause of action or defense to an action founded upon the title to property in mining claims, or to the rents or profits out of the same, shall be effectual unless it appear that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within

two years before the commencement of the act in respect to which such action is prosecuted or defense made.

SEC. 3. This act shall take effect from and after its passage.

#### Jurisdiction.

1. Although the jurisdiction of mining claims is given to Justices' Courts, yet if the amount in controversy is above two hundred dollars, the District Court has jurisdiction. No statute can deprive the latter Court of the jurisdiction confirmed and defined by the Constitution. *Hicks v. Bell*, 3 Cal. 224.

2. In a suit brought by one of the partners in a mining company against the company to recover his share, which had been sold for an alleged non-payment of an assessment, and also to recover the sum of his proportionate share of the gold taken out by the said company, the District Court has jurisdiction. *Schulper v. Evans*, 4 Cal. 212.

3. Where the complaint in an action to recover possession of a mining claim in a Justice's Court contains an allegation of injury done and a prayer for damages, the latter should be disregarded or stricken out, and the plaintiff be allowed to try his right to the claim. *Van Etten v. Jilson*, 6 Cal. 19.

4. Justices of the Peace have no jurisdiction in actions to recover damages in a sum over two hundred dollars for injury to a mining claim or for its detention. *Van Etten v. Jilson*, 6 Cal. 19; *Small v. Gwinn*, 6 Id. 449; *Freeman v. Powers*, 7 Id. 105.

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### ACTIONS RESPECTING MINING CLAIMS.

*AN ACT amendatory and supplementary to the Act entitled "An Act to regulate Proceedings in Civil Cases in Courts of Justice of this State."*

[Passed May 15th, 1854; Stat. 1854, p. 72; Stat. 1855, p. 199; Wood's Digest, p. 248.]

SEC. 63. In actions respecting miners' claims in a Justice's Court, the Justice shall have power upon application of the party out of possession of the claim or claims, after notice of one day to the adverse party, to appoint a receiver of the proceeds of the claim pending the action. If the parties agree upon a person, he shall be appointed such receiver; if the parties do not agree, the Justice shall appoint a receiver, who shall take an oath, which shall be filed with the Justice,

that he is not interested in the action between the parties, and that he will honestly keep an account of all gold dust, or metals of any kind, the proceeds of the claim or claims in dispute. After the appointment of such receiver, the Justice shall have power to issue a written order to any Sheriff or Constable to put such receiver into possession of such claim, which order said Sheriff or Constable shall execute, and the receiver shall remain in possession of the claim or claims so long as said action may remain undetermined in any Court. The Court in which the action may be pending shall have authority, upon the application of either party with two days' notice to the other, from time to time, to make such orders for the disposition of the proceeds of such claim or claims for the safety of the same as may seem proper. The Court in which the action may be pending shall also have power, upon application of the receiver based upon his affidavit, to punish as for contempt all persons who have been guilty of disturbing the receiver in the possession of the claims.

SEC. 64. The receiver mentioned in the last section shall keep an accurate account of all the proceeds of the claim pending action, and of all amounts paid out for working the same, and shall retain the proceeds and pay the same over pursuant to the order of the Court. The receiver shall also be required, on demand of either party, to give security for the faithful performance of his trust, and shall be allowed for the same a reasonable compensation, to be paid out of the proceeds of the claim in his hands, but in no case exceeding ten per cent. upon such proceeds.

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*AN ACT to regulate Proceedings in Civil Cases in the Courts of Justice of this State.*

Section 621 provides that "In actions respecting mining claims, proofs shall be admitted of the customs, usages, or

regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the Constitution and laws of this State, shall govern the decision of the action.”

#### Customs.

1. The code permits evidence of the customs established in mining claims, which implies a permission on the part of the State to the miner to seek whatever he choose in the mines for the precious metals, and extends to him whatever right the State might have to the mineral when found. *McClintock v. Bryden*, 5 Cal. 100.

2. The only question in this case being, whether the quartz rock—parted or not from its original connection—was a portion of the same quartz ledge or claim taken up by defendant; it was not important whether the rock was upon or beneath the surface, or what its condition, provided it were a part of such ledge or claim. In cases of this kind, the custom of miners is entitled to great, if not controlling weight. *Brown v. '49 and '56 Quartz Mining Co.*, 15 Cal. 160.

3. Under certain circumstances, proof of the customs in other districts may be proper—at least, this Court is not satisfied to the contrary. But in this case, the admission of such testimony, if error, was immaterial, as the case was tried by the Court, and the judgment placed on independent ground, upon which it can stand. *Id.* See also *Table M. T. Co. v. Stranahan*, 20 Cal. 198.

#### Rules.

1. The mode of acquiring and the extent of a mining claim must be in conformity to the local rules of miners; but *query*, can the local regulations alter the general rules of holding property? *Dutch Flat W. Co. v. Mooney*, 12 Cal. 534.

2. In suit for mining claims, the Court permitted defendants to introduce in evidence the mining rules of the district, though adopted after the rights of plaintiffs had attached: *held*, that admitting plaintiff's rights could not be affected by such rules, still, as defendants claimed under them, they were competent evidence to determine the nature and extent of defendants' claim—the effect of such rules upon preëxisting rights being sufficiently guarded by instructions of the Court. *Roach v. Gray*, 16 Cal. 383.

3. Miners have the power to prescribe the rules governing the acquisition and divestiture of titles to this class of claims and their extent, subject only to the general laws of the State. *English v. Johnson*, 17 Cal. 107.

4. In this case: *held*, that the defendant could not offer in evidence an extract or a single clause of a book containing the mining rules, but must offer the whole book—the book being in Court and in possession of defendant, and it being necessary to a fair understanding of any one part, that the whole should be inspected. *Id.*

5. Plaintiffs here—three in number—claiming by purchase and location, defendant offers to show that one of the plaintiffs had admitted, years ago, that he had more than five claims: *held*, that the evidence was properly ruled out, its relevancy not being shown. *Id.*

6. The quantity of ground a miner can claim by location or prior appropriation for mining purposes may be limited by the mining rules of the district. *Prosser v. Parks*, 18 Cal. 47.

7. The mining rules of the district cannot limit the quantity of ground or the number of claims a party may acquire by purchase. *Id.*

8. The fact that mining laws and regulations were passed on a different day from that advertised for a meeting of miners, does not invalidate them. Courts will not inquire into the regularity of the modes in which these local legislatures or primary assemblages act. They must be the judges of their own proceedings. It is sufficient that the miners agree—whether in public meeting or after due notice—upon their local laws, and that these are recognized as the rules of the vicinage, unless fraud be shown, or other like cause for rejecting the laws. *Gore v. McBrayer*, 18 Cal. 582.

#### Record.

1. The question as to the necessity of recording mining claims, reserved. *Partridge v. McKinney*, 13 Cal. 159.

2. In the absence of any mining rule declaring that a failure to record a claim avoids the entry or claim, a party may take actual possession of mineral land, though in taking possession he does not observe the requirements as to registry, and the like acts prescribed by the local laws. But if he take more land than these rules allow, this would not give him title to the excess against any one subsequently entering, who complies with the laws, and takes up such excess in accordance with them. *English v. Johnson*, 17 Cal. 107.

#### Location.

1. One party may locate ground in the mineral districts for fluming purposes, and another party may locate the same ground for mining purposes; the two locations will not conflict, being for different purposes. *O'Keiffe v. Cunningham*, 9 Cal. 589.

2. A party may take up a claim for mining purposes, that has been, and still is, used as a place of deposit for tailings by another, and his mining right may be subject to this prior right of deposit; but this claim of the miner will not be subject to those who come after him. *Id.*

3. A misdescription in the notice of the claimant to a quartz lead, posted up near the premises, in pursuance of the mining laws of the district in which the lead is situated, and where the lead is under ground and undeveloped, will not vitiate the claim. *Johnson v. Parkes*, 10 Cal. 446.

4. In this case the Court instructed the jury: 1st, that if they found plaintiffs located their claims, as now claimed, before the location of defendants' claim, then they should find for plaintiffs; and 2d, if they found that defendants never located any claim adjoining plaintiffs' claim, then they should find for plaintiffs: *held*, that the instructions are wrong, as violating the principle that plaintiff must recover on the strength of his own title; that defendants, having been in actual possession for a long time, were not required to show anything beyond it until a prior and paramount right was shown in plaintiffs; that it was not essential to defendants' possession to show that they had ever formally located their claim, in accordance with any mining regulations, or that they had or claimed any other mining ground. *Penn. M. Co. v. Owens*, 15 Cal. 136.

5. The first locator of a quartz ledge is not confined simply to the solid quartz actually embodied in the bed rock, but is entitled to the loose quartz rock and decomposed material which were once a part of the ledge and are now detached, so far as the general formation of the ledge can be traced. *Brown v. '49 and '56 Quartz Mining Co.*, 15 Cal. 160.

6. The right of the quartz miner comes from his appropriation, and whenever his claim is defined there is no reason in the nature of things why the appropriation may not as well take effect upon quartz in a decomposed state as any other sort, or why the condition to which natural causes may have reduced the rock, should give character to the title of the locator. *Id.*

7. A mining claim must be in some way defined as to limits, before the possession of the work upon part gives possession to any more than the part so possessed or worked. But when the claim is defined, and the party enters in pursuance of mining rules and customs, the possession of part is the possession of the entire claim. *Atwood v. Fricot*, 17 Cal. 27.

8. Where G., McB., and others verbally agreed to prospect for quartz, and to be equally interested in claims taken up, and McB. discovered a lead or claim and located it by putting up a written notice with G.'s name and others on it, appropriating the lead: *held*, that G.'s right attached by these proceedings, and could not be divested by the mere act of McB. in taking down the notice and putting up other notices with other names. *Gore v. McBrayer*, 18 Cal. 582.

9. After the notice was put up, G. became a tenant in common of the mine, and not a partner, and could bring an action to vindicate his title against McB. or any one who excluded him or denied his right. *Id.*

10. The usual mode of taking up mining claims is to put upon the claim a written notice that the party has located it; and this taking up and giving notice may be done by a party personally, or by any one for him, or with his assent or approval; and whenever the appropriation is made by an agent having authority from a principal to make it, the act is complete, and the title vests in the principal, and the agent by his mere act cannot subsequently divest it. *Id.*

11. Although mining ground may be located in the absence of local regulations, yet the extent of such location is not without limit. The quantity taken must be reasonable: and whether it be so or not, will be determined in such cases by the general usages and customs prevailing upon the subject. If an unreasonable quantity be included within the boundaries, the location will not be effectual for any purpose, and possession under it will only extend to the ground actually occupied. *Table M. T. Co. v. Stranahan*, 20 Cal. 198; 21 *Id.* 548.

12. Upon the question of reasonableness of the extent of a mining location, a general custom, whether existing anterior to the location or not, may be given in evidence; but a local rule stands upon a different footing, and cannot be introduced to affect the validity of a claim acquired previous to its establishment. *Id.*

#### Work.

1. Where the regulations of a mining locality require that every claim shall be worked two days in every ten, the efforts of the owner of a claim to procure machinery for working the claim are, by fair intendment, to be con-



sidered as work done on the claim. So, also, in working on adjoining land in constructing a drain to enable the owner to work the claim. *Packer v. Heaton*, 9 Cal. 568.

2. Work done outside of a mining claim, with the intent to work the claim, to be considered by intendment as work done on the claim, must have direct relation and be in reasonable proximity to it. *McGarrity v. Byington*, 12 Cal. 432.

3. Going on the lead to work it, or even work done in proximity and in direct relation to the claim, for the purpose of extracting or preparing to extract minerals from it—as, for example, starting a tunnel a considerable distance off to run into the claim—would be a possession of the claim within the meaning of the rule. *English v. Johnson*, 17 Cal. 107.

#### Forfeiture and Abandonment.

1. Mining laws, when introduced in evidence, are to be construed by the Court, and the question whether by virtue of such laws a forfeiture had occurred, is a question of law, and cannot be properly submitted to a jury. *Fairbank v. Woodhouse*, 6 Cal. 433.

2. In an action for a mining claim, when the defendants asked for an instruction to the jury "that if the plaintiff had abandoned the claim, and did not intend to return and work it before the commencement of the suit he could not recover," and the Court gave the instruction "subject to the seventeenth section of the Statute of Limitations:" held, that the qualification of the instruction was error. *Davis v. Butler*, 6 Cal. 511.

3. A party after having abandoned his claim will not be permitted to come in within the time allowed by the statute for commencing civil actions, and reassert or resume his former interest to the prejudice of those who may have afterwards appropriated it. *Id.*

4. Where the Court instructed the jury, that, "where an abandonment is sought to be established by the act of the party, the intention alone governs; and, if such party leave a mining claim with the intention not to return, his abandonment is as complete, if it exist for a minute or a second, as though it continued for years; but if he left with the intention of returning, he might do so at any time within five years; provided, there was no rule, usage, or custom of miners, of such notorious character as to raise a presumption of an intention to abandon;" the question of abandonment was fairly left to the jury. *Waring v. Crow*, 11 Cal. 366.

5. Where a party's rights to a mining claim are fixed by the rules of property, which are a part of the general law of the land, they cannot be divested by any mere neighborhood custom or regulation. *Id.*

6. In the absence of any custom or local regulation, the right of property once attached in a mining claim, does not depend upon mere diligence in working such claim. The failure to comply with any one mining regulation is not a forfeiture. *McGarrity v. Byington*, 12 Cal. 426.

7. In an action of ejectment to recover mining claims, an answer to the complaint which avers "that any rights plaintiff may have had, etc., have been forfeited by a non-compliance with the rules of the miners in the diggings embracing the claims in dispute prior to defendant's entry," is insufficient in not setting forth the rules, customs, etc. *Dutch Flat Co. v. Moony*, 19 Cal. 534.

**Possession—Evidence of Title, etc.**

1. Actual possession of a portion of a mining claim, according to the custom of miners, in a given locality in the Yuba River, extends by construction to the limits of the claim held in accordance with such customs. *Hicks v. Bell*, 3 Cal. 224.

2. In a controversy between two mining companies, it was competent to prove the execution of certain receipts for water purchased by the plaintiffs, as tending to show the existence of the company, and that it had actually located and was in operation at the time the receipts purport to be signed. *Lone Star Co. v. West Point Co.*, 5 Cal. 447.

3. A prior locator of a mining claim on the banks of a stream has the right to the use of the bed of the stream for fluming or working; and a subsequent erection, which will hinder the working of the claim, is an encroachment upon his rights and the subject of damages. *Sims v. Smith*, 7 Cal. 148.

4. A writ of injunction will issue to restrain trespass in entering on a mining claim and removing auriferous quartz from it, where the injury threatens to be continuous and irreparable. *Merced M. Co. v. Fremont*, 7 Cal. 317.

5. The removal of gold from a mine is taking away the entire substance of the estate, and comes within that class of trespass in which injunctions are universally granted. *Id.*

6. In an action of ejectment to recover an undivided interest in a mining claim, it is not necessary to make parties defendants who are in possession holding other undivided interests, and who claim no right to the interest sued for. *Waring v. Crow*, 11 Cal. 366.

7. Possession of one partner or tenant in common of a mining claim, is the possession of all. *Id.*

8. A book in which claims are recorded by resolution of the miners of a district, may be admitted in evidence in an ejectment suit for a mining claim. *McGarrity v. Byington*, 12 Cal. 426.

9. A copy of a notice posted on a mining claim to show its extent, is not admissible in evidence, if the notice itself be attainable. Such evidence is secondary, and is admissible only upon the terms which control its introduction in other cases. *Lombardo v. Ferguson*, 15 Cal. 373.

10. Ejectment for mining ground, the parties being owners of claims on opposite sides of the same hill. Plaintiffs were an ordinary joint stock company, or common partnership, and claimed by purchase and transfer from the original members of the company. The practice of the company was to issue to members certificates of stock, and those certificates constituted the only evidence of membership recognized by the company, transfers being made by an assignment of the certificates, and a notice thereof in the books of the company. On the trial, these certificates with the assignments were read in evidence by plaintiffs, to show their interest in the ground and their right to maintain the action, defendants objecting to them on the ground of irrelevancy, and that their execution was not proved: held, that the certificates, etc., were relevant to show possession in plaintiffs, but that their execution should have been proven. *Pennsylvania Mining Co. v. Owens*, 15 Cal. 136.

11. Defendant killed deceased while in the act of injuring a mining claim. On the trial defendant offered to show that he was the owner, and in the lawful possession of said claim at the time of the killing. The Court refused testimony to this point: *held*, that defendant had a right to prove his ownership of the claim for the purpose of showing his mental condition, the motives which prompted his action, and determining the character of the offense; that the ownership was part of the *res gestae*, and should have been admitted, subject to instructions of the Court as to its legal effect, though when admitted it may not have amounted to a justification. *People v. Costello*, 15 Cal. 350.

12. Where in suit for a mining claim, a plaintiff in his complaint states the particular facts constituting his title, and on that title seeks a recovery, and the answer denies such title, plaintiff must prove his title as averred, at least in substance, and he cannot against defendant's objection, recover on another and different title. And where plaintiffs were permitted to prove and recover on a title other than the one set up, it was error in the Court below to refuse a new trial, the motion for which was based on affidavit of defendant that he was taken by surprise, arising out of the frame of the pleadings, and that he could have rebutted plaintiff's case but for this surprise. *Eagan v. Delaney*, 16 Cal. 87.

13. Mining claims are held by possession, but that possession is regulated and defined by usage and local and conventional rules; and the "actual possession" which is applied to agricultural land, and which is understood to be a *possessio pedis*, cannot be required in case of a mining claim, in order to give a right of action for the invasion of it. *Atwood v. Fricot*, 17 Cal. 37.

14. So if a party enters upon a mining claim *bona fide*, under color of title, as under a deed or lease, the possession of part as against any one but the true owner or prior occupant, is the possession of the entire claim described by the paper; and this, though the paper did not convey the title. A third person could not invade the possession of the party taking it under such circumstances, and set up as against him outstanding title in a stranger with which he had no connection. *Id.*

15. The condition of the possessor in such instances is no worse than that of the occupant of other real estate, in which the principle above stated applies. But this principle does not touch the case of an entry into possession in pursuance of mining rules and regulations, as for a forfeiture or abandonment, etc., but applies where possession is taken independently of such rules. *Id.*

16. In suit for damages for an entry upon mining claims, and for perpetual injunction, etc.: *held*, that it was error for the Court below to charge the jury that, if they believed that no injury or damage was done by defendants to plaintiffs, they would find for defendants; that such charge was calculated to mislead, inasmuch as the law presumes damages from a trespass, and under the charge the jury might have decided the case upon this want of proof by plaintiff's damages, instead of absence of proof of their title. In such case the error being apparent, injury from the charge to the jury is presumed, unless respondent affirmatively repels the presumption. *Id.*

17. In suit for mining claims, the Court charged the jury, in effect, that possession taken of a mining claim, without reference to mining rules, was sufficient, as against one entering by no better title, to maintain the action; and further, that this possession need not be evidenced by actual inclosure,

but "if the ground was included within distinct, visible, and notorious boundaries," this was enough, against one entering without title: *held*, that the instruction was right; that though the regular and usual way of obtaining possession of mining claims be according to the mining regulations of the vicinage, still, a possession not so taken is good against one taking possession in the same way; and that the actual prior possession of the first occupant would be better than the subsequent possession of the last. *English v. Johnson*, 17 Cal. 107.

18. No acts are required as evidence of the possession of a mining claim other than those usually exercised by the owners of such claims. A miner is not expected to reside on his claim, nor build on it, nor cultivate it, nor inclose it. He may be in possession by himself, or by his agents or servants. *Id.*

19. As to the extent of a miner's possession where he enters under a written claim or color of title, his possession, except as against the true owner or prior occupant, is good to the extent of the whole limits described in the paper, though the possession be only of a part of the claim. *Id.*

20. Where a claim is distinctly defined by physical marks, possession taken for mining purposes embraces the whole claim thus characterized, though the actual occupancy or work done be only on or of a part, and though the party does not enter in accordance with mining rules, or under a paper title. The rule which applies to agricultural lands, and holds to a more strict interpretation of a *possessio pedis*, does not apply to such a case. *Id.*

21. The nature of the possession requisite, when applied to different kinds of property, as agricultural lands, town lots covered with water, large districts where there is no timber, etc., suggested. *Id.*

22. Fences are not requisite around mining claims. The physical marks upon and around the claim are sufficient to notify every one of the possession and claim of the possessor; and by common understanding the going upon a claim to work it is an appropriation of the entire claim, especially if that claim can be appropriated to that extent by location of one man. *Id.*

23. *Query*: Whether, if several distinct claims have been consolidated into one, and the rules of the locality allow but one claim to be taken by one man, and after this consolidation a person should go upon the consolidated claim to work, without authority from the owner, his possession might not be referred to the particular claim upon which he entered, and not to the whole tract; and whether the question might not be one of intent; and whether the presumption would not be, that he meant to appropriate only the quantity allowed by the rules of the vicinage? *Id.*

24. Where plaintiff claims, under purchase and location, a small tract of mineral land, with demarked limits, of which he is in possession, and there is no proof on the trial that the extent of his claim is opposed to the local rules, the presumption is that his possession is rightful and not wrongful. *Id.*

25. In such case the plaintiff need not show, in the first instance, that he was in possession in accordance with the local laws; but may (as a vendee under a deed may as to other land) make a *prima facie* case, upon possession; and this is enough until the defendant shows that the possession is wrongful, because in violation of rules which justify him in going upon the premises and working them. *Id.*

26. Plaintiffs are owners of mining claims located in the bed of the creek, and defendants own claims situated on a hill in the vicinity. The refuse matter washed from defendants' claims is deposited on plaintiffs' claims, to such an extent as to render the working of them impracticable. Plaintiffs' claims were first located, and are valuable only for the gold they contain: *held*, that plaintiffs are entitled to damages for the injury done their claims by such deposit, and to an injunction against the same in future; that the enjoyment of their claims lies in the use necessary to obtain the gold, and that to interrupt this use is to take away the opportunity to enjoy, and defeat the object for which they were located and taken possession of. *Logan v. Driscoll*, 19 Cal. 623.

27. The rule *qui prior est in tempore potior est in jure* applies in such cases. *Id.*

28. The position that, so long as the use made by defendants of their claims is not in itself unlawful, plaintiffs cannot complain of its effect upon them, is untenable, because no use is lawful which precludes plaintiffs from the enjoyment of their rights. *Id.*

29. Possession of mining ground acquired by an entry under a claim for mining purposes, upon a tract, the bounds of which are distinctly defined by physical marks, accompanied with actual occupancy of a part of the tract, is sufficient to enable the possessor to maintain ejectment for the entire claim, although such acts of appropriation are not done in accordance with any local mining rule. The exclusion, therefore, of evidence tending to prove a possession of this character, is error. *Table M. T. Co. v. Stranahan*, 20 Cal. 198; 21 *Id.* 548.

30. The complaint charged that defendants had wrongfully entered upon a tract of mining ground (described by metes and bounds) owned by the plaintiffs, and had extracted therefrom gold-bearing earth of the value of \$1,000, and that they threatened to continue their wrongful acts, and prayed for damages in the sum of \$1,000, and for a perpetual injunction. The answer set up title in defendants to a specific portion of the tract claimed by plaintiffs, and denied that they had worked upon any other portion than that to which they thus asserted title. The jury under a general submission found "a verdict in favor of plaintiffs with one dollar damages:" *held*, that the verdict decided the question of title in favor of plaintiffs, and that upon it they were entitled to a decree perpetually enjoining defendants from working upon the ground claimed in the complaint; that this equitable relief was a matter of right, the denial of which by the District Court was error. *McLaughlin v. Kelly*, 22 Cal. 211.

31. The Court in the case above cited having instructed the jury that, if they found that plaintiffs were entitled to the mining ground, they must find a verdict for \$1,000 damages upon the admissions of the answer: *held*, that because the jury brought in a verdict for one instead of one thousand dollars' damages, it was not therefore to be concluded, in direct opposition to their general verdict, that they did not find the title in the plaintiffs. The damages being admitted by the pleadings were not in issue, and the verdict in that respect was immaterial. *Id.*

#### Tailings.

1. The pay dirt and tailings of a miner which are the productions of his labor, are his property. *Jones v. Jackson*, 9 Cal. 237.

2. To suffer the tailings to flow where they list, without confinement within proper limits, is conclusive evidence of abandonment, unless there is some peculiarity in the locality which renders it unnecessary to raise any artificial obstructions. *Id.*

3. If the tailings are allowed to mingle with those of other miners, this would not give a stranger a right to the mixed mass. *Id.*

4. Where tailings are allowed to flow upon the ground of another, he is entitled to them. *Id.*

5. Where a place of deposit is necessary for working a mine, the miner has the right to appropriate such ground as may be necessary for this purpose, provided, he does not interfere with existing rights. His intention to appropriate such ground must be clearly manifested by outward acts. Mere posting notices is not sufficient. He must claim the place of deposit as such, or as a mining claim. *Id.*

6. A party may take up a claim for mining purposes that has been, and still is, used as a place of deposit for tailings by another, and his mining right may be subject to this prior right of deposit; but this claim of the miner will not be subject to those who come after him. *O'Keiffe v. Cunningham*, 9 Cal. 589.

7. Plaintiffs owned certain mining claims in the bed or channel of a stream. Defendants owned claims in the same stream above and adjoining the claims of plaintiffs, defendants' claims being located first. Defendants constructed a flume, running from their own claims to and upon plaintiffs' claims, and through this flume a large quantity of tailings was deposited on plaintiffs' claims, to their great damage. The flume was constructed for the purpose of working defendants' claims; was proper and necessary for that purpose, and the deposit of tailings was occasioned by the ordinary working of the claims. The Court instructed the jury, that the person first locating a claim in the bed of the stream is entitled to the channel below as an outlet, and that when such outlet from the usual mining operations above become obstructed, he may open the same; and if he can do so by no other means, may construct a flume down the channel as far as is necessary, and as far as it can be constructed without considerable damage to claims subsequently located: *held*, that the instruction was wrong; that the defendants were not entitled, as matter of strict legal right, to an easement upon plaintiffs' claims for the purpose mentioned; that the doctrine that, under certain circumstances, one person may have a right of way by necessity over the land of another, does not apply to this case; and further, that this Court does not recognize the doctrine that one person can go on the land of another and erect thereon buildings or other structures; and that mining claims stand on the same footing in this respect as other property; that, if the acts of defendants were authorized by any local custom or regulation, its existence should have been averred and proved. *Esmond v. Chew*, 15 Cal. 142.

8. Each person mining in the same stream is entitled to use, in a proper and reasonable manner, both the channel of the stream and the water flowing therein. Where, from the situation of different claims, the working of some will necessarily result in the injury of others, if the injury be the natural and necessary consequence of the exercise of this right, it will be *damnum absque injuria*, and will furnish no cause of action to the party injured. The reasonableness in the use is a question for the jury, to be determined by them upon the facts and circumstances of each particular case. *Id.*

**Boundary Lines.**

1. In the absence of mining regulations, the fact that a party has located a claim bounded by another, raises no presumption that the last located claim corresponds in size, or in the direction of its lines, with the former. *Live Yankee Co. v. Oregon Co.*, 7 Cal. 40.

2. Where two mining companies agree upon a boundary line between their claims, and subsequently other parties purchase the several interests of the two companies, with a knowledge of the boundary so fixed, both parties are concluded by it, and estopped from denying it. The fact that such line was fixed by a mistake as to the true boundaries, makes no difference. *McGee v. Stone*, 9 Cal. 600.

**Fixtures.**

1. A steam engine and boiler, fastened to a frame of timber, bedded in the ground of a quartz ledge sufficient to make it level, with a roof or shed to protect the machinery, and used for the purpose of working the ledge, are so annexed to the freehold as to become a fixture. *Merritt v. Judd*, 14 Cal. 59.

**Agreement.**

1. Where the owner of a mining claim contracts, verbally, with J. for working it, and agrees to pay him a certain sum out of the proceeds, and J. goes into possession, and while he is working it, the owner sells it to a third party, who takes without notice of J.'s contract, his claim is not liable to J.'s contract. *Jenkins v. Redding*, 8 Cal. 598.

2. Parties taking possession of a quartz lead under an agreement made with another party, cannot retain possession and refuse compliance with their agreement, made in consideration of such possession and right to the lead. *Hutchins v. Nougues*, 11 Cal. 28.

**Execution.**

1. The interest of a miner in his mining claim is property, and not having been exempted by law may be taken and sold under execution. *McKeon v. Bisbee*, 9 Cal. 137.

2. The mere fact that the judgment debtor (against whom execution had been issued) was found upon the mining ground of the plaintiff, did not justify the Sheriff who had the execution in going on the ground and digging up the soil and taking the gold it contained. *Rowe v. Bradley*, 12 Cal. 230.

**TAXATION.**

*AN ACT supplementary to an Act entitled "An Act to provide Revenue for the Support of the Government of this State," approved May 17th, 1861.*

[Approved April 4th, 1864 ; Stat. 1863-4, p. 471.]

SECTION 1. All provisions of law exempting mining claims

from taxation are hereby repealed, so far as they apply to lands or mines in the condition of private property and granted as such by the Spanish or Mexican Government, or the Government of the United States, or of this State.

**Taxation.**

1. The interest of the occupant of a mining claim is property, and is liable to taxation. *California v. Moore*, 12 Cal. 56.

2. The Legislature having expressly exempted mining claims from the operation of the revenue act, it cannot be presumed that it intended indirectly to tax them by levying a tax on the price paid for them. Money invested in purchasing and opening mining claims is not within that portion of the revenue act which provides for taxing "all capital loaned, invested, or employed in any trade or business whatsoever." *Id.*

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**FOREIGN MINERS.**

*AN ACT to provide Revenue for the Support of the Government of this State.*

[Approved May 17th, 1861; Stat. 1861, p. 447.]

SEC. 90. No person, unless he is a citizen of the United States, or shall have declared his intention to become such (California Indians excepted), shall be allowed to take, or extract, gold, silver, or other metals from the mines of this State, or hold a mining claim therein unless he shall have a license therefor as hereinafter provided.

SEC. 92. \* \* The amount to be paid for such licenses shall be at the rate of four dollars per month; and said licenses shall in no case be transferred. \* \*

SEC. 93. The collector shall collect the foreign miners' license tax provided for in this act, from all persons liable to pay the same, and may seize the property of any such person refusing to pay such tax, and sell the same at public auction on one hour's notice by proclamation, and shall deliver the property to the purchaser, together with a bill of sale, with the license attached, which shall transfer the title thereof to



the person paying the highest price therefor, and after deducting the tax and necessary expenses incurred by reason of such refusal and sale of property, the collector shall return the surplus of the proceeds of the sale, if any, to the person or persons whose property was sold; *provided*, that should any person, liable to pay such tax in any county of this State, escape into any other county with intention to evade the payment of such tax, then, and in that event, it shall be lawful for the collector to pursue such person and enforce the payment of such tax in the same manner as if no such escape had been made. Any foreigner representing himself to be a citizen of the United States shall, in the absence of his certificate to that effect, satisfy the collector of the correctness of his statement by affidavit or otherwise, and for that purpose the collector is empowered to administer such oath or affirmation. All foreigners not eligible to become citizens of the United States, residing in any mining district of this State, shall be considered miners under the provisions of this act. Every subsequent license, after the first, when issued to the same person shall be dated from the expiration of the former license.

SEC. 97. Any person or company hiring foreigners, or interested with them as partners, or renting, or on shares, or in any manner connected with any foreigner or foreigners in working, or in possession of, any mining ground in this State, shall be held liable for the amount of license of each and every foreigner with whom such person or company is so connected or interested. All mining ground worked or possessed, all improvements, all tools and machinery used in working such ground by said person or company, shall be subject to sale for the payment of said license tax in the manner provided in section ninety-three of this act. The collector shall have power to require any person or company believed to be indebted to, or to have money, gold dust, or property of any kind belonging to any foreigner, or in which any foreigner is

interested, in his or their possession, or under his or their control, to answer under oath as to such indebtedness, or the possession of such money, gold dust, or other property. In case a party is indebted, or has possession or control of any moneys, gold dust, or other property, as aforesaid, of such foreigner or foreigners, he may collect from such party the amount of such license, and may require the delivery of such money, gold dust, or other property as aforesaid, and in all cases the receipt of the collector to said party shall be a complete bar to any demand made against said party, or his legal representative, for the amounts of money, gold dust, or property embraced therein; and *provided*, that whenever, from any cause whatever, the collector shall be unable to collect the foreign miners' license from any person liable to pay the same, he shall certify to the Road Overseer of the district the name or description of the person and the amount due, and such person shall, upon the requisition of the Overseer, work upon the public roads of the district a sufficient number of days to exhaust said sum by crediting against it one dollar for each day's work, and every person so liable to work, and refusing so to do, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than five and not more than thirty days.

SEC. 98. Any person or company hiring foreigners to work in the mines of this State, shall be liable for the amount of the license for each person so employed.

#### Foreign Miners.

1. The State can levy a poll tax to such extent as it may deem expedient upon all persons engaged in mining upon public lands, and there is nothing in the Constitution of the United States which deprives this State of the power of imposing it. *People v. Naglee*, 1 Cal. 238.

2. Where the State passed a law taxing foreign miners until such time as Congress shall by law assume the regulation of the mines, it is not contradictory or repugnant to the power of Congress. *Id.* 240.

3. Aliens cannot be said to have any property to enjoy in the mineral public lands by which the Constitution of the State would guarantee them against taxation for working or extracting the metals therefrom. *Id.*

4. A tax upon aliens for working the public lands, and extracting therefrom the precious metals, does not require any exaction; the alien may pay or not, depending upon his option whether he will or will not engage in mining operations, and becomes a license fee. *Id.* 273.

5. When a foreign miner, subject to a license tax, was employed by one of a partnership to work in the mines which were the partnership's property: *held*, that the employer, and not the partnership, was liable for the tax. *Meyer v. Larkin*, 3 Cal. 403.

6. Where the tax collector levied on the property of the partnership for the tax due by the foreigner thus employed, and sold the whole claim and dispossessed the plaintiff (one of the partners): *held*, that he was guilty of trespass for which the action was properly brought. *Id.*

7. The fact that the parties in the possession of a gold mine are foreigners, and have obtained no license, affords no apology for trespassers. The State alone can enforce the law prohibiting foreigners from working in the mines without a license. *Mitchell v. Hagood*, 6 Cal. 148.



# MINING LAWS OF NEVADA TERRITORY.

## A N A C T

*To provide for the Formation of Corporations for certain Purposes.*

[Approved Dec. 20th, 1862. Laws Nevada Ter., 1862, p. 162; Id. 1864, p. 49.]

### C O R P O R A T I O N S .

SECTION 1. [As amended by Act of Feb. 19th, 1864.] Corporations for manufacturing, mining, milling, ditching, mechanical, chemical, building, and farming purposes, may be formed according to the provisions of this act, such corporations and the members thereof being subject to all the conditions and liabilities herein imposed and to none others.

SEC. 2. [As amended by Act of Feb. 19th, 1864.] Any three or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some person competent to take the acknowledgment of deeds, and file and have recorded, in a book provided for that purpose, in the office of the Clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy thereof under the hand of the Clerk and the seal of the Court of said county, in the office of the Secretary of the Territory, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for such length of time (not less than two, nor more than six months) as may be designated in such certificate, and the name of the city, town, or locality and county in which the principal place of business of the company is to be located.

SEC. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the County Clerk of the county in which it is filed, or his deputy, or by the Secretary of the Territory, shall be received in all the Courts and places as *prima facie* evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same and their successors, shall be a body corporate and politic, in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power :

*First.* To sue and be sued in any Court having competent jurisdiction.

*Second.* To make and use a common seal, and to alter the same at pleasure.

*Third.* To purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require.

*Fourth.* To appoint such officers, agents, and servants as the business of the corporation shall require ; to define their powers, prescribe their duties, and fix their compensation.

*Fifth.* [As amended by Act of Feb. 19th, 1864.] To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders, as hereinafter provided.

*Sixth.* To make by-laws, not inconsistent with the Organic Act of this Territory, and the laws of the Congress of the United States and of this Territory.

*Seventh.* The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in its articles of incorporation.

SEC. 5. [As amended by Act of Feb. 19th, 1864.] The corporate powers of the corporation shall be exercised by a Board of not less than three Trustees, who shall be stockholders in the company, and a majority of them citizens of the United States, and residents of this Territory, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath as prescribed by the laws of this Territory, and who shall, after the expiration of the term of the trustees first selected, be annually elected by the stockholders at such time and place within the Territory, and upon such notice and in such manner as shall be directed by the by-laws of the company ; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own or represent by proxy shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees. It shall be competent at any time for two-thirds of the stockholders of any corporation organized under this act to expel any trustee from office, and to elect another to succeed him.

In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation, or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the Board of Trustees.

SEC. 6. If it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors shall be elected.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

SEC. 8. The first meeting of the Trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least twenty days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto in the Territory.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have been so entered upon the books of the company, as to show the names of the parties by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

SEC. 10. [As amended by Act of Feb. 19th, 1864.] The stockholders of any corporation formed under this act may, in the by-laws of the company, prescribe the times, manner, and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stockholders personally, or by publication once a week for at least four weeks in some newspaper published in the county in which the principal

place of business of the company is located, and if none be published in such county, then in the newspaper nearest to said principal place of business in the Territory. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her, or them. The sale of said shares shall be made as prescribed in the by-laws of the company, but shall in all cases be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares or portion of a share, as the case may be, shall be deemed the highest bidder.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a shareholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend, except from the net profits arising from the business of the corporation; nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock, unless in the manner prescribed in this act; and in case of any violation of the provisions of this section the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, or reduced, or paid out; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

SEC. 14. The total amount of debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in, and in case of an excess, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at



the time, and except those not present when the same did happen, shall, in their individual and private capacities, be liable, jointly and severally, to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

SEC. 15. No corporation organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt for circulation as money.

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company contracted or incurred during the time that he was a stockholder; for the recovery of which joint or several actions may be instituted and prosecuted.

SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward, or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her own name.

SEC. 18. It shall be the duty of the trustees of every company incorporated under this act to keep a book containing the names of all persons, alphabetically arranged, who are or shall become shareholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day except Sunday and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having the charge of such [book] a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company, and such book or certified copy shall be presumptive evidence of the facts therein stated in any action or proceeding against the company or any one or more of the stockholders.

SEC. 19. If at any time the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse

or neglect to exhibit the same or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry as provided in the preceding section, he shall be deemed guilty of a misdemeanor and shall forfeit and pay to the party injured a penalty of not less than one hundred dollars nor more than one thousand dollars and all damages resulting therefrom, to be recovered in an action of debt in any Court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the District or Probate Court of the county in which the principal place of business of the corporation is located.

SEC. 20. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of [its] debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

SEC. 21. [As amended by Act of February 19th, 1864.] Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called, by a notice signed by at least a majority of the trustees and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located, or if no newspaper is published in the county, then in the newspaper nearest thereto in the Territory, which notice shall specify some object of the meeting, the time and place where it is to be held, and the amount [to] which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of the capital stock.

SEC. 22. If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, and signed, and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by the second section of this act, and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 23. Upon the dissolution of any corporation formed under this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

SEC. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the District Judge of the judicial district in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a meeting of the stockholders called for the purpose it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the Territory. At the time and place appointed, or at any other to which it may be postponed by the Judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

SEC. 25. All corporations hereafter formed under the laws of other States or Territories for the conducting and transaction of any of the branches of business mentioned in section first of this act shall not be allowed to engage in such business within this Territory, and shall be disregarded in law and denied the rights and privileges of corporations.

SEC. 26. All corporations heretofore formed under the provisions of acts of incorporation in other States or Territories, and holding or owning property within this Territory of such character as specified in section first of this act, and managed by a board or boards of trustees or directors, and having their principal place of business outside the limits of this Territory, are hereby required to remove their places of business, principal offices, books, and papers heretofore kept or necessary for the transaction of such business to some point, to be designated by said corporation, within the limits of this Territory within six months after the passage of this act, or otherwise such corporation or corporations shall be disregarded in law as a corporation, and the incorporators or stockholders

thereof be treated as tenants in common or joint owners of such property so owned or held within this Territory. Any corporation by filing and recording its certificate of incorporation or a certified copy thereof with the Secretary of the Territory and with the Clerk of the county in which such corporation may locate as the principal place of business, and fully complying with all the provisions of this act shall be deemed sufficient to entitle such corporation to all the rights and privileges under the provisions of this act.

*AN ACT to disapprove of the Twenty-sixth Section of the Act of the Legislative Assembly of the Territory of Nevada, and for other purposes.*

[Approved March 3d, 1863—Statutes at Large, Thirty-seventh Congress, p. 709.]

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That Section Twenty-six of an Act of the Legislative Assembly of the Territory of Nevada, entitled "An Act to provide for the formation of Corporations for certain purposes," approved Dec. 20th, 1862, said section being as follows: "Section 26. All corporations heretofore formed under the provisions of acts of incorporation in other States or Territories, and holding or owning property within this Territory of such character as specified in Section First of this act, and managed by a board or boards of trustees or directors, and having their principal place of business outside the limits of this Territory, are hereby required to remove their places of business, principal offices, books and papers, heretofore kept, or necessary for the transaction of such business, to some point, to be designated by said corporation, within the limits of this Territory, within six months after the passage of this Act: or otherwise such corporation or corporations shall be disregarded in law as a corporation, and the corporators or stockholders thereof be treated as tenants in common or joint owners of such property so owned or held within this Territory. Any corporation, by filing and recording its certificate of incorporation, or a certified copy thereof, with the Secretary of the Territory and with the Clerk of the County in which such corporation may locate as the principal place of business, and fully complying with all the provisions of this act, shall be deemed sufficient to entitle such corporation to all the rights and privileges under the provisions of this act," be, and the same is hereby disapproved, and the same is hereby annulled and made void.*

*Sec. 2. And be it further enacted, That all incorporated companies duly organized within any State or Territory of the United States may sue and be sued, plead and be impleaded, in the several Courts of the Territory of Nevada, anything in the laws of said Territory to the contrary, notwithstanding.*

SEC. 27. [As substituted by Sec. 7 of Act of Feb. 19th, 1864.] Any corporation desiring at any time to remove its principal place of business into some other county in the Territory, shall file in the office of the County Clerk of such county a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal, at least once a week for four weeks, in the newspaper published nearest to the city, town, or locality, from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation heretofore formed under this act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation; *provided*, that within three months from the passage of this act, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest to the city, town, or locality, and where the principal place of business of such corporation has in fact been located, designating the city, town,

or locality, and county, where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town, or locality, and county in the Territory.

SEC. 28. Nothing in this act shall be so construed as to include within its provisions either telegraph, railroad, stage, express, or insurance companies.

SEC. 29. This act shall take effect from and after its passage.

SEC. 30. [As added by Section 8 of Act of Feb. 19th, 1864.] In corporations already formed, or which may hereafter be formed under this act, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interests in any mining claim in this Territory, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust, or other instrument vest or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied or which may hereafter be levied by the Board of Trustees of such corporation be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; *provided*, that the greater portion of said amount of capital stock shall have been so subscribed; and *provided*, further, that this section shall not be so construed as to prohibit the stockholders of any corporation formed or which may be formed for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-law or express contract.

[The amendatory and supplemental act of February 19th, 1864, went into effect from and after its passage.]

## A N A C T

*For the Encouragement of Mining.*

(Approved February 20th, 1864; Laws of Nevada Ter., 1864, p. 53.)

## SUITS AGAINST JOINT TENANT, TENANT IN COMMON, OR COPARCENER.

SECTION 1. When two or more persons owning or claiming as joint tenants, tenants in common, or coparceners, a majority of the number of feet, shares, or interests in any mining claim in this Territory shall have formed or shall hereafter form themselves into a corporation or organized association for the purpose of working and developing such mining claim, and shall proceed to actually work and develop the same, such corporation or organized association, may institute in any Court of competent jurisdiction, suit in its corporate or associate name against any person (not a member of such corporation or association) owning in said mining claim as tenant in common, joint tenant, or coparcener, who shall refuse or neglect to pay his or her proportion of the money actually expended or indebtedness assumed by such corporation or association for the actual and necessary working and development of said mining claim.

SEC. 2. Before such suit shall be instituted, such corporation or association shall cause to be published in some newspaper published in the county where the mining claim is located, and if no newspaper be published in such county, then in some newspaper published in the nearest adjoining county, once a week for at least four weeks, a notice specifying : *First.* The amount of money actually expended or indebtedness assumed by such corporation or association in the actual and necessary working and development of said mining claim. *Second.* The amount due from such joint tenant, tenant in common, or coparcener, as his or her proportion of the money actually expended or indebtedness assumed by such corporation or association in the actual and necessary working and development of said mining claim. *Third.* The intention of such corporation or association to institute suit for the same ; *provided*, that only ten days' notice shall be required before instituting suit under this act, where personal service of the notice mentioned in this section shall be obtained on such joint tenant, tenant in common, or coparcener.

SEC. 3. It shall be proved on the trial of such suit, first, that the amount of money expended or indebtedness assumed by such corporation or association, as specified in the notice mentioned in section two of this act, was expended or assumed by such corporation or association in the actual and necessary working and development of said mining claim ; second, the quantity of interest owned by defendant in said mining claim at the time said money was expended or indebtedness assumed by

such corporation or association ; and, third, that defendant, though duly notified of the amount due from him or her for the actual and necessary working and development of said mining claim and of the intention of plaintiff's suit therefor, as mentioned in section two of this act, has for ten days after the completion of said notice neglected or refused to pay the same.

SEC. 4. The amount of money expended or indebtedness assumed by such corporation or association as the proportion due from such tenant in common, joint tenant, or coparcener, for the actual and necessary working and development of such mining claim shall be a lien in favor of such corporation or association upon the interest of such tenant in common, joint tenant, or coparcener in such mining claim from the time such money was expended or indebtedness assumed by such corporation or association, which lien shall bind such interest from the time of such payment or assumption ; and all judgments rendered in any action instituted under the provisions of this act, and any execution issued thereon, shall bind and run against such interest, and no other property of the defendant shall be subject to execution on any such judgment. Such interest may be sold as provided for sales of real estate on execution, and may be redeemed as is provided for the redemption of real property sold on execution in other cases upon the payment of purchase money with fifty per cent. thereon.

SEC. 5. This act shall apply only to such corporations or associations as are actually engaged in mining ; and no corporation formed under the laws of any other State, Country, or Territory, and no organized association having its principal place of business out of this Territory, or a majority of whose directors, trustees, or managing agents shall be non-residents of this Territory shall be entitled to the benefits of this act.

SEC. 6. All acts or parts of acts so far as they are inconsistent or in conflict with the provisions of this act are hereby repealed.

SEC. 7. This act shall take effect from and after its passage.

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A N A C T

*Empowering Corporations and Associations for Mining to Sue Individual Members.*

[Approved December 19th, 1862; Laws of Nevada, 1862, p. 72.]

SUITS AGAINST DELINQUENT MEMBERS OF CORPORATIONS.

SECTION 1. Corporations and associations, and companies formed for mining purposes, are hereby authorized in their corporate or associated

name to institute suits against any one or more of their members who may be delinquent in the payment of their assessments.

SEC. 2. Before such suit is brought before any Court having jurisdiction of the amount, such delinquent, and the amount he may owe, and the intention to institute suit thereon shall be advertised in a newspaper published in the county where the mining claim is located, and if no newspaper be published in such county, then in a newspaper published in the nearest adjoining county, for at least once a week for one month before such suit is instituted.

SEC. 3. It shall be proved on the trial of such suit that the trustees or managing agents of said corporation, or association, or company, were fully authorized to institute such suit by a majority of the members of said corporation, or association, or company.

SEC. 4. The members of such corporation, association, or company shall be competent witnesses to establish the assessment and indebtedness of the delinquent member.

SEC. 5. This act shall apply only to such corporations, associations, and companies who are actually engaged in mining, and for delinquency in assessments for mining.

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AN ACT

*For the Protection of Mines and Mining Claims.*

[Approved Dec. 17th, 1862; Laws Nevada, 1862, p. 33.]

SUITS FOR DAMAGES CAUSED BY WORKING OF MINES.

SECTION 1. Any person or persons, company or corporation, being the owner or owners of or in the possession under any lease or contract for the working of any mine or mines within the Territory of Nevada, shall have the right to institute and maintain an action as provided by law for the recovery of any damages that may accrue by reason of the manner in which any mine or mines has been or is being worked and managed by any person or persons, company or corporation, who may be the owner or owners or in the possession of and working such mine or mines under a lease or contract, and to prevent the continuance of the working and managing such mine or mines in such manner as to hinder, injure, or by reason of tunnels, shafts, drifts, or excavations, the mode of using or the character and size of the timbers used or in anywise endangering the safety of any mine or mines adjacent or adjoining thereto.

SEC. 2. Any judgment obtained for damages under the provisions of this act shall become a lien upon all the property of the judgment debtor



or debtors, not exempt from execution, in the Territory of Nevada owned by him, her, or them, or which may afterwards be acquired, as is now provided for by law, which lien shall continue two years unless the judgment be sooner satisfied.

SEC. 3. Any person or persons named in the two first sections of this act shall have the right to apply for and obtain from any District Court or the Judge thereof within this Territory an order of survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and, as far as known, the names of such parties; also the location of the mine or mines of the parties making such application, and that he has reason to believe and does believe that the said parties complained of, their agent, or employés are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant. Upon the filing of the affidavit as aforesaid, the Court or Judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than five nor more than ten days from the date thereof, to show cause why an order of survey should not be granted, and upon good cause shown, the Court or Judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the Court and report the result and conclusions to the Court, which report shall be filed with the Clerk of said Court. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in the first two sections of this act, by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case such costs shall be taxed against the defendant as other costs in the suit. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

SEC. 4. This act shall take effect from and after its passage.

## AN ACT

*Relating to the Manner of commencing Civil Actions.*

[Approved December 20th, 1862; Laws Nevada, 1862, p. 120.]

## SUITS AGAINST MINING COMPANIES.

SECTION 1. In all actions hereafter brought on contract the defendants may be sued by the name or style under which the contract was made; and upon its being shown on the trial who are the persons of whom the name or style are descriptive, judgment may be rendered against them as now provided by law.

SEC. 2. In all suits against any company organized for mining purposes or against any company transacting business or keeping an office within this Territory service may be made by reading and delivering a copy of the summons to the president, secretary, cashier, or managing agent thereof; and in case such service cannot be had, then by publication as now provided by law.

## AN ACT

*Defining the Time for commencing Civil Actions.*

[Approved November 21st, 1861; Laws Nevada, 1861, p. 27.]

## ACTIONS FOR RECOVERY OF MINING CLAIMS.

SEC. 4. No action for the recovery of mining claims or for the recovery of the possession thereof shall be maintained unless it appear that the plaintiff or his assigns was seized or possessed of such mining claims in question within two years before the commencement of such action.

## AN ACT

*For securing Liens to Mechanics and Others.*

[Approved Nov. 21st, 1861; Laws Nevada, 1861, p. 38.]

## LIEN OF CONTRACTOR FOR LABOR ON TUNNEL OR SHAFT.

SEC. 12. When any person or persons shall make an express contract in writing with any organized or incorporated mining company, or with the owner or owners of any lode or lodes of gold or silver-bearing quartz, or of any other metal of value, or with the person or persons who were at the time of such contract in the actual possession of such lode or lodes, by himself or themselves, under *bona fide* claim of owner-

ship, to cut, excavate, and run a tunnel from any given point into and through said lode or lodes, or sink a shaft thereon to the depth of fifty feet or more, and shall go on and complete such contract, he or they shall have a lien upon said lode or lodes, together with the tunnel thereto cut and run, or the shaft thereto sunk, for the amount contracted to be paid; and all the provisions of this act respecting the mode of recording, securing, and enforcing mechanics' liens shall apply thereto.

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A N A C T

*To provide for the Conveyance of Mining Claims.*

[Approved Dec. 12th, 1862; Laws Nevada, 1862, p. 12.]

FORMALITIES REQUISITE—CONSTRUCTION AND PROOF.

SECTION 1. Conveyance of mining claims shall hereafter require the same formalities and be subject to the same rules of construction as the transfers and conveyances of other real estate. (See Laws of Nev., 1861, p. 11.)

SEC. 2. All conveyances of mining claims heretofore made by bills of sale or other instruments in writing, with or without seals, recorded or unrecorded, shall be construed in accordance with the lawful local rules, regulations, and customs of the miners in the several mining districts of this Territory; and if heretofore regarded valid and binding in such districts shall have the same force and effect between the parties thereto as *prima facie* evidence of sale, as if such conveyances had been made by deed under seal.

SEC. 3. The location and transfers of mining claims heretofore made shall be established and proved, in contestation before Courts, by the local rules, regulations, or customs of the miners in the several mining districts of the Territory in which such locations and transfers were made.

SEC. 4. This act shall take effect from and after its passage.

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A N A C T

*Concerning Conveyances.*

[Approved Nov. 5th, 1861; Laws Nevada, 1861, p. 21.]

MORTGAGEE OF MINING INTERESTS.

SEC. 77. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations, or customs in regard to the

locating, holding, or forfeiture of claims, but in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations, or customs of mines, and shall be allowed such compensation therefor as shall be deemed just and equitable by the Court ordering the sale upon a foreclosure; *provided*, that such compensation shall in no case exceed the amount realized from the claim by a foreclosure and sale.

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A N A C T

*To Regulate Proceedings in Civil Cases in the Courts of Justice of the Territory of Nevada.*

[Approved Nov. 29th, 1861; Laws Nevada, 1861, p. 434.]

PARTITION OF A MINING CLAIM.

SEC. 707. When several persons hold and are in possession of mining claims, as joint tenants or tenants in common, upon the petition of one or more of the joint tenants, or tenants in common, the Court having jurisdiction shall appoint a commissioner who shall proceed to make a partition of the property to be divided, and make a report to the Court as provided in this act.

SEC. 708. In case of partition of a mining claim, any of the tenants in common or joint tenants interested therein may file an affidavit showing to the Court that a sale for cash would be injurious to him, her, or them, the Court shall upon such showing appoint a commissioner who shall decide such claim as hereinafter provided for.

SEC. 709. The commissioner provided for in the last section shall proceed to the place where such claim is located, and at such time as the Court may direct, within not less than twenty nor more than forty days after such sale shall have been ordered by the Court, shall sell such claim at auction to the highest bidder, in parts or parcels to the joint tenants or tenants in common, and shall receive bids in shares or undivided interests; or parts of such claim to be divided.

SEC. 710. The party or parties seeking the partition of such mining claim shall be deemed the highest bidder, within the meaning of the last preceding section, who will take the least part or portion of such mining claim, at a place upon such claim to be selected by him, her, or them, in proportion to the whole share, shares, or interest held by such party or parties; *provided*, that if the remainder of the joint tenants or tenants

in common shall fail to make a higher bid in proportion to their joint shares or interests in such claim, then the bid of the party or parties seeking the partition shall be received and declared to be the highest bid, and the commissioner shall proceed to measure off such claim to the party or parties as hereinafter provided; and such claim or part of the claim so measured off by said commissioner to the highest bidder shall be and is hereby considered as an entire surrender to the opposing party the remainder of his or her shares or interests in said claim, thereby relinquishing the residue of the shares or interests held by the party to whom was awarded the highest bid (not included in the measurement of said commission) to the adverse party.

SEC. 711. Whenever any such bid as mentioned in sections seven hundred and nine and seven hundred and ten, shall have been received and declared, the commissioner shall go upon the claim and measure off to such bidder the amount of such claim so bid off, at such place as the bidder shall elect.

SEC. 712. After setting off such bids as provided in the last section, the commissioners shall again receive bids as hereinbefore provided, and shall thereafter measure off such bids as provided for in section seven hundred and ten, and shall continue in the same manner to receive bids and set apart the same from such claims until the parties who still hold an undivided portion of such mining claim shall be satisfied that the sale cease, and are content to hold the remaining portion of such claim as joint tenants or tenants in common, as the case may be.

SEC. 713. The Court may confirm or set aside the report, and if necessary appoint a new commissioner. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive.

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#### AN ACT

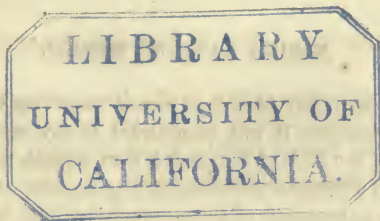
*Amendatory of and Supplemental to an Act entitled an Act to Amend, and Supplemental to An Act to Provide for the Assessing and Collecting County and Territorial Revenue.*

[Approved February 20th, 1864; Laws Nevada, 1864, p. 35.]

#### TAXATION OF MINING CLAIMS.

SEC. 4. \* \* \* \* \* *Provided*, that nothing in this section shall be so construed as to exempt from taxation possessory claims to the lands or mines; *provided*, further, that nothing herein shall be intended to

interfere with the primary title to the lands belonging to the United States ; and *provided*, further, all property, including mining claims and possessory rights thereto, shall be taxed according to their cash value at the time the assessment may be made.



## MINING LAWS OF MEXICO.

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### ROYAL ORDINANCES

*For the Direction, Regulation, and Government of the Important Body of the Miners of New Spain, and of its Royal Tribunal General. By order of His Majesty, Madrid, 1783.*

BY THE KING.

By a letter of the 24th of December, 1771, my Viceroy of New Spain represented to me, among other things, that in order to ameliorate the condition of the miners of that kingdom, to correct effectually and suitably the mischievous abuses which have been introduced among the mine proprietors, and persons working in the mines, and to obviate the mutual complaints resulting therefrom, he considered it a matter of extreme importance that a new code of General Ordinances should be framed for the said establishment (of miners) in such manner as to render the government thereof more uniform and complete; proposing at the same time the means which he judged most likely to secure a right method in the execution of so important a work. From his information, and from what my Supreme Council of the Indies laid before me upon this subject in a Consult of the 13th of June, 1773, I thought fit to enjoin and command my said Viceroy by Royal letter of the 20th of July next following, among other things, that there should be formed the new Ordinances as above proposed, with explanations and additions of all that might seem necessary with a view to the actual state of affairs; and after consultation with the mine owners, and a certain number of surveyors, keeping in view all the documents referred to in his said letter, and also the collection of Laws and Statutes of my said Dominions, and especially those which are referred to by my said Royal Letter. Afterwards, conformably to a report which was laid before me on the 7th of August,

1773, by a Junta of four Ministers, formed under my Orders, and with my entire approbation, it was commanded to my said Viceroy by a Royal Order of the 12th of November, then instant, that in the Ordinances which in consequence of the said Royal Letter, were about to be formed for the government of the mines, they should be regulated and established in an united body, upon the model of the Consulates in such a manner as to secure to its members the necessary encouragement, permanency, and support ; afterwards, by a letter of the 26th of September, 1774, my said Viceroy represented to me that the miners of those my Dominions, had petitioned in a printed representation, dated the 25th of February of the same year (and accompanying his letter), not only to be established in a body, similar to the Consulates, as already ordained, but that a Bank of Supplies should be instituted for the encouragement of the mines ; that a College of Metallurgy should be erected for improving the construction of the machinery, and for other scientific purposes, and that a new Code of Ordinances should be framed for the mines, proposing to derive the funds necessary for the support of these establishments from the amount of the double seigniorage duties payable on the metals, from which they hoped to be relieved, by reason of what they had stated in their representation, and upon all these points my said Viceroy suggested what he considered most expedient : Wherefore, and after considering the Report laid before me thereupon by my Supreme Council of the Indies on the 23d of April, 1776, I was pleased to determine, amongst other things, and to command by my Royal Letter of the 1st of July of the same year, that the important society of the Miners of New Spain should be erected into a Corporate Establishment similar to the Consulates of Commerce in my dominions, giving them, for that purpose, my Royal consent and necessary permission, and granting them the power of levying upon their silver one-half or two-thirds part of the double duties, payable before that time to my Royal Revenue in the way of seigniorage, but from which I relieved them by the said Royal Letter ; in consequence of all which, by a Public Act or Sitting of the representative Deputies of the said Society held on the 4th of May, 1777, they proceeded to incorporate themselves, accordingly, to determine the offices of which their Tribunal should consist, and to appoint the proper persons to fill these offices. Their proceedings were laid before the Viceroy, who approved of them in my Royal Hand, by his decree of the 21st of June of the same year ; permitting to the said Tribunal, until my Sovereign Pleasure should be known concerning it, the exercise of all the powers of Administration, direction, and management, as enjoyed according to law by the Consulates of the Monarchy in all respects in



which the exercise of such powers should be conformable to my Will, restraining them only from the exercise of judicial authority, which is permitted to the tribunals of the said Consulates of Commerce, and that restriction only to operate till the said New Ordinances should be framed and approved of by me. And the Viceroy having informed me of all this by letter of the 27th of the said year 1777, I thereupon thought fit to confirm the same by my Royal Order of the 29th of December then following, addressed to the said Viceroy, commanding him thereby; and again by another Royal Order of the 20th of January, 1778, that if the New Tribunal of Miners had not as yet formed their Ordinances, and laid them before him, he should cause the same to be done with the utmost dispatch; this having been completed on the 21st of May of the said year, they were transmitted to me by the Viceroy, with a letter of the 26th of August, 1779, in order that, after considering them, and the representations made concerning them, by the Fiscal of the Royal Audience and by the Assessor-General of the Vice-Royalty, I might express my Royal approbation thereof. Lastly, having consulted with ministers of approved zeal and probity, and considered the best means of reconciling most justly the true interests of the State, with the particular welfare of the said important body of Miners, I have, for the direction, regulation, and government of that body, and of their Tribunal, commanded the publication of the following Ordinances:

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## CHAPTER I.

### TRIBUNAL GENERAL.

SECTION 1. The New Tribunal of Miners shall be styled "The Royal Tribunal General of the Important Body of the Miners of New Spain," and shall be esteemed and considered by all other Tribunals with that respect which is conducive to the important purposes for which my Royal pleasure has credited it.

SEC. 2. The Tribunal shall be perpetual, conformably to the acts of its creation, approved by me, and shall at all times be composed of an Administrator General, who is to be its President; a Director General, and three Deputies General, which latter persons may, in case of necessity, be reduced to two, but never be increased.

SEC. 3. The said offices are to be filled only by practical and intelligent mine proprietors, qualified for the office by an experience of more

than ten years in the operations of mines; this qualification must be strictly observed, and these persons must be real American or European Spaniards, of unmixed descent, sons and descendants of ancient Christians, and born in lawful matrimony, with preference always, under these circumstances, to such persons as may have been Judges and Territorial Deputies of the mines, or may have been much experienced in them.

SEC. 4. The Administrator and Director General of this new and first creation, in consideration of their extraordinary merit in having suggested and promoted the reform of the mines, and the establishment of the body of miners, by having directed their attention for many years past to the means most conducive to that end; and also, in consideration of their especial knowledge and experience in such concerns, of the length of time during which they have followed the mining profession, their families having pursued no other since their first settlement in New Spain; and lastly, in consideration of the time which is necessary to accomplish such a project, and that no persons can be more likely to succeed in its accomplishment than those with whom it has originated, shall hold their said offices for their lives, but the Deputies General, now first appointed, shall only hold their offices for the time regularly allotted to them according to the rule that shall be laid down for their alternative succession, over and above the time already elapsed since their appointment.

SEC. 5. For the elections of Administrator and Director General after the death or failure of the present, and for those of Deputies General at all times henceforward, there shall be held in Mexico at the beginning of the month of December, once in every three years, commencing from the present time, a Meeting, consisting of one Deputy from each Mining District, provided with sufficient powers from the miners of such district, and if any such proprietors shall not send a Deputy on account of their being too remote or too poor to pay the expenses of his journey to Mexico, and his residence therein, it shall be sufficient if they send full power and instruction to any person residing in that capital to act for them, provided the same be not a Deputy or Agent for any other Mining District; but he must be a mine owner or mine supplier.

SEC. 6. To make a mine town to have a vote at the election, it must be proved to contain an inhabiting population, and a church, and a Curate or Deputy; a Judge and Deputies of miners, six mines in actual working, and four Reducing Establishments.

SEC. 7. The City of Guanaxuato shall have six votes in the said election; that of Zacatecas, four; that of San Luis Potosi, three; that of Pachuca and Real del Monte, three. And generally speaking, the min-

ing districts which bear the title of *City* shall have three votes each, and those which bear the title of *Town*, or in which there are Provincial Treasuries, two votes each.

SEC. 8. Before proceeding to the election, there shall be held three scrutinies, on three several days, for the qualification of persons eligible to these offices, with this *Proviso*: that the person to be elected Administrator General must have been one of the Deputies General during one of the preceding triennial periods, except in the case of reëlection, when it will be necessary to observe what is laid down in the tenth Section of this present Chapter: observing, also, that at the expiration of each triennial period only one new Deputy General shall be appointed to supply the place of the one about to resign; which person so resigning at the end of the first three years, is to be the one who, at the time of the original appointment, had the smallest number of votes. The same rule is to be observed at the end of the second triennial period, and again at the end of the third, with regard to the last of the three original Deputies. Afterwards, at the end of each succeeding triennial period, the senior Deputy shall always resign in favor of the one newly elected. Conformably to these regulations, each Deputy will in future hold his said office for nine years, excepting in the case of the death of any of them before the expiration of that time, in which case, at the next Triennial Meeting, besides the Deputy that is to supply the place of him who resigns from having completed his nine years, there shall be another appointed to fill the vacancy occasioned by such deaths—which latter, in point of seniority, shall stand in the place of his predecessor, in order to depart as little as possible from the established rule of succession.

SEC. 9. The Administrator, the Director, and Deputies General shall preside over the said Meeting of Electors, and shall have votes therein; and the election shall take place on the 31st day of December, by secret lots, and those shall be considered duly elected who have the greatest number of votes; and in case of any dispute arising, the election shall fall upon that person for whom the Administrator General shall give his vote.

SEC. 10. To enable any person to be reëlected to any of the said offices of the Royal Tribunal, an interval of three years must have elapsed since his last service, and he must have more than one-half of the whole number of votes.

SEC. 11. No person elected to any of the said offices can excuse himself from serving it; but every such person must accept the same on the day of his election, before sun set, under the penalty of two thousand dollars, and of being obliged to serve such office, even after the payment of the penalty.

SEC. 12. In case of the death of the Administrator, the Director, or any one of the Deputies General, or of their resignation (which can only be allowed upon just and indispensable cause), the other members of the Tribunal shall elect a temporary substitute, who shall hold the office till the expiration of the triennial period then subsisting, and till the next general meeting, when a proper person shall be elected conformably to the Eighth Section of this present Chapter.

SEC. 13. Those who shall be elected Administrator General and Director General, in succession to the persons now filling those offices, and others hereafter, shall hold the said offices—the first for six years, and the second for nine, with a view to this consideration : that, from the circumstances already explained, and which are applicable to all persons who compose the Tribunal, the Director ought to be a person well acquainted with the interests, concerns, and resources of the Establishment ; with the management and working of the mines, and with the theory and practice of the sciences relating thereto—all which is not to be acquired in a short time.

SEC. 14. The Factor, the Assessor, and the Notary may be appointed and removed, with or without cause, at the free will and pleasure of the Royal Tribunal General.

SEC. 15. In the first General Meeting, to be held in Mexico, for the purpose of carrying the present Ordinances into effect, there shall be chosen twelve Advisers—experienced mine proprietors, or mine suppliers, of distinguished reputation, four of whom shall be persons resident in Mexico. And the Royal Tribunal may consult all or any of them in difficult cases whenever it shall be necessary ; and in order that their employment may be temporary and to avoid the inconvenience of which might arise from their being all changed at the end of each triennial period, six others shall be appointed at the next General Meeting, to supply, for the second triennial period, the places of those six of the first elected twelve, who shall have been chosen by the smallest number of votes ; and afterwards, at the end of each triennial period, the six newly elected shall replace the six who shall have been the longest in office—so that the number of twelve will always remain complete. And I hereby declare : that the reëlection of said Advisers in the aforesaid General Meetings, shall be permitted, without regard to those intervals of time and other formalities established in the Tenth Section of this present Chapter, for the regulation of the offices therein mentioned ; observing only : that their seniority is to be reckoned from the period of their reëlection ; and I grant to the same Advisers a seat in the Public Sitzings of the Royal Tribunals next after the Deputies General ; and when any mine proprietor from any of the mine districts shall be in Mex-

## MINING LAWS OF MEXICO.

ico, I grant to him the honor, dignity, and office of Adviser of the Royal Tribunal, as long as he shall remain there.

SEC. 16. On the days of scrutiny and before proceeding to the election, there shall be laid before the general meeting a clear and correct statement of the funds with which the body of Miners have been endowed, what they have produced, and how they have been applied, during the preceding triennial period, as well as of the Bank of Supplies, its gains and losses, showing at one view the condition of the body of miners at that time, their concerns and possessions in money and effects, their claims, debts, dues, and affairs of all kinds.

SEC. 17. Before proceeding to the scrutinies the permission of the Viceroy must be obtained; and after they are concluded, an account thereof must be rendered to him similar to the practice of the Tribunal of Commerce of that capital (Mexico).

SEC. 18. To the Director General shall also belong the offices of Fiscal and Promoter of the important body of Miners, and he shall in consequence represent, suggest, and propose to the Royal Tribunal, whatever he may judge conducive to the advancement and success of that establishment, giving them also, in proper time, such advice and caution, as might tend to obviate whatever he may consider as prejudicial to their interest.

SEC. 19. The Royal Tribunal shall transmit to me annually, through the Viceroy, an account of the working of the mines and of the concerns of the body of Miners; and, moreover, they may communicate with me, extraordinarily, through the same channel upon great occasions when it may be necessary.

SEC. 20. The Royal Tribunal may have a representative at the City and Court of Madrid for the protection of its interests, and in case it should seem necessary, upon any weighty occasion, to send a confidential person to communicate with the same Court, they must, in the first instance, satisfy the Viceroy of the importance of the matter which obliges them to incur such expense, and must procure his certificate of the same, which will precede my royal license.

SEC. 21. The Clerk of the Royal Tribunal shall keep a minute book of resolutions, in which shall be entered all the determinations relative to the administration and economy of the mines, whether the same be intended only to last for a time or to be permanent and perpetual.

SEC. 22. There shall be preserved in the Royal Tribunal, the originals of the royal letters patent, orders, and declarations which have proceeded or may proceed from me; as also the official letters from the Viceroys, and copies of the orders that have been or shall be received through

their hands, and lastly, all acts and fundamental decrees relating to the creation or administration of the Royal Tribunal, all which shall be carefully preserved in the archives ; and there shall be a book kept in which there shall be an accurate account of the same, which may be referred to as occasion may require ; and I prohibit the originals from being ever taken out to be exhibited, but permit accurate copies or extracts to be taken, compared, and corrected, in due form, according to law.

SEC. 23. Before proceeding to the triennial elections an inventory shall be drawn up, and the papers, both of the archives and of the office of the Tribunal, shall be inspected by two of the deputies, in order that it may be ascertained whether they correspond with the inventory of the preceding triennial period, and the papers received within the last three years shall be then added to the former.

SEC. 24. The Secretary of the Royal Tribunal shall be one of the Royal Notaries, duly instructed and admitted to his office, and possessing all those qualifications required by the law in persons filling that office, and must be, moreover, a person of good birth, character, and education, and of good conduct and respectable habits, in order that by these means the office may be held in honor, and that he who holds it may be respected and esteemed both in the Tribunal and elsewhere, and he is to be addressed by the title of Don.

SEC. 25. The Secretary shall propose to the Royal Tribunal three persons, one of whom is to be appointed chief official to the Court, and another second official, if necessary, but he shall have free permission and authority to appoint and remove at his pleasure the writer or writers whom he shall employ for the Tribunal.

SEC. 26. The Royal Tribunal shall appoint two messengers or porters, who are to execute its orders, provided that they be persons of good character and Spaniards.

SEC. 27. The Royal Tribunal shall draw up a table of fees or wages to be received by persons employed in Mexico, and in the mining districts, but the same is not to be reduced into practice until it shall have been laid before the Royal Audiency of each District, qualified or regulated by them and transmitted to me for my royal approbation.

SEC. 28. The Administrator, the Director, and Deputies General of Mexico, and all other persons employed, shall, at the time of entering upon their respective offices, make oath that they will truly and faithfully discharge the duties thereof, that they will observe these ordinances, and cause them to be observed, and that they will observe secrecy in the causes and affairs submitted to them, and also that they will maintain the mystery of the Immaculate Conception of Our Lady.

## CHAPTER II.

## JUDGES AND DEPUTIES.

SECTION 1. The respective Royal Courts shall be Judges of the Mines, conformably to the laws established for the Government of the Indies, in all cases which are not expressly referred to by these ordinances to the Deputation of the Body of Miners.

SEC. 2. All those who for more than one year shall have worked one or more mines applying as owners thereof, in whole or in part, their capital, labor, or personal attention and care, shall be enrolled amongst the miners of the district, and their names shall be noted in the book of enrollment to be kept by the Judge and Clerk of that mining district.

SEC. 3. The miners so enrolled, and the mine suppliers (being miners), the persons who reduce by contract, and the proprietors of works for stamping and smelting ores in each district, shall assemble in the beginning of January in each year, according to custom, at the house of the Judge, for the purpose of electing the persons who are to exercise the office of Deputy for such district for the ensuing year, which persons either must be or must have been mine proprietors, of superior practice and intelligence—men of good conduct, trustworthy, and possessed of all the qualifications requisite for such office.

SEC. 4. Every one of the miners thus enrolled shall have one vote at such elections; moreover, if the mine suppliers, being miners as aforesaid, the reducers by contract, and the owners of such works as are mentioned in the preceding section, each two persons shall have one vote between them, and they shall not themselves be eligible as deputies, unless they be also mine owners, and possess the necessary qualifications.

SEC. 5. When there is a very great number of voters, as in Guanaxuato, the same practice which has hitherto prevailed shall be continued in such district, namely, of choosing beforehand the electors who are to proceed to the election of Deputies.

SEC. 6. The Administrators of Mines may vote instead of their principals, provided the latter do not reside in that neighborhood, and provided such Administrators be fully authorized by their principals for that purpose, and such Administrators shall be eligible as Deputies if their occupations permit it and they have the necessary qualifications.

SEC. 7. The Judge of Mines of each mine town or establishment, together with the Deputies of the preceding year, shall preside at and regulate the election, and shall have votes at the same; and in case of dispute the vote of the Judge shall be decisive, and those persons who have

the greater number of votes, qualified and computed as before determined, shall be considered as duly elected.

SEC. 8. In each mine town, or establishment, there shall be a deputation consisting of two Deputies, and to the end that those employments may be for the duration of two years, and that one of such Deputies may be a person well qualified for the office, in the first year alone of carrying this ordinance into effect, two Deputies shall be appointed, but in every succeeding year only one, who is to replace the Deputy then oldest in office, and as this cannot be complied with at the second election (*i. e.* at the end of the first year), that Deputy of the two first elected shall remain in office during the second year, who at the first appointment was elected by the greatest number of votes, so that the other of the two first elected Deputies will be in office only for one year.

SEC. 9. There shall also be elected in the same manner in each Mine Town, or Establishment, four substitutes, who are to supply the place of the Deputies, in the case of their refusal to serve, their death, illness, necessary absence, or other just impediment, and to assist at the several Courts of Appeal in such cases and circumstances as may occur, and which will be treated of in their proper place; but in districts where the electors themselves are to be nominated, according to the fifth section of this present chapter, those four who shall have the greater number of votes are to be the substitutes for the first year, and it is to be understood that these offices are to be also for the duration of two years, and in each successive year only two new substitutes are to be chosen, observing with regard to them the same rule which has been laid down for the election of Deputies in the preceding section; and for the sake of greater perspicuity, and to prevent all arbitrary acts in the succession, either to the said offices of Substitutes or to those of Advisers, as directed by several sections of these Ordinances, those persons shall always be preferred who shall have had the greater number of votes at their respective elections, when the elections have been on one and the same day; but in other cases those who have been longest in office shall be preferred.

SEC. 10. The said substitutes shall also be recorders of their respective districts, and shall observe and procure whatever may appear necessary for the common interests of the miners in their neighborhood, and by virtue of this office shall have a superior claim to be elected as deputies or to other offices connected with the mines.

SEC. 11. The persons elected as deputies must accept the office within three days of the time of their election under a penalty of one thousand dollars, which penalty is to go to the fund of that district, and the person refusing to accept shall be obliged to serve the office, notwithstanding



ing the payment of such penalty ; and even though there may appear a just cause for his refusal, he must accept the office notwithstanding, and serve it until such cause shall have been admitted by the Royal Tribunal General of the Miners, to which body it must be submitted.

SEC. 12. It is forbidden to reëlect any person to any one of the before-mentioned offices, until the expiration of two years from his last serving in such office, and the person reëlected, after such interval, must accept the same office under a penalty of five hundred dollars, which penalty is to be paid to the general fund of the district, and he shall be obliged to serve the office, notwithstanding the payment of such penalty ; without prejudice, however, to any sufficient cause of exemption which he may have, but this must be submitted to the Royal Tribunal General of Mexico, and he must serve the office in the meantime as directed by the preceding section.

SEC. 13. All the mine proprietors, mine suppliers, persons reducing by contract, and owners of reducing establishments of the respective districts shall confer on the new deputies power to promote their interest and pretensions, and for all the usual purposes, and shall swear to obey them in all that relates to the exercise of their offices ; and the deputies themselves shall take upon them their office according to law, and swear to observe these ordinances (which are to be read at every election at the time of their entering into office), and to maintain secrecy in the causes which come under their cognizance.

SEC. 14. As soon as the election is over, an account of it and proper notice shall be immediately transmitted to the Royal Tribunal General of the Miners, in order that if there shall appear to be no defect or irregularity in the conduct of it, it may be approved of by the Supreme Government of New Spain ; and be it understood, that no charges whatever shall be made for the procuring of such approval, nor for any of the formalities which must precede it.

SEC. 15. The Territorial Deputies, the Inspectors, and Surveyors of mines shall receive no pay from my Royal Treasury, but shall be supported from the profits of the respective mines, agreeably to the laws upon that subject, for which purpose the Royal Tribunal General of Mexico shall impose certain moderate duties, according to the conditions and circumstances of each mine district, in the manner and under the rules laid down by Sec. 36 of Chap. III, of these Ordinances.

SEC. 16. In the month of February in every year the Territorial Deputations shall submit to the Royal Tribunal General of Mexico a report upon the condition of the mines and miners in their respective districts, and their dependencies, suggesting such measures as may appear to them

conducive to the preservation and better advancement of the same, and also upon the quantity of silver produced, and of quicksilver consumed in the preceding year, upon the number of mines which are in the course of actual working, as well as such as have been abandoned, and why they have been so abandoned, and upon those which have been newly discovered or reëstablished, requiring for this purpose from the Provincial Courts, and treasuries, and other offices, all certificates, attestations, and other documents which may be necessary. And it is hereby ordered, that the said reports and documents be laid before the Viceroy, in order that, after acquainting himself with their contents, he may submit them to me, with a suggestion of such measures as he may deem advisable, and likely to meet with my Royal approbation.

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### CHAPTER III.

#### JURISDICTION IN MINING CAUSES, AND THE MODE OF PROCEEDING AND PASSING JUDGMENT.

SECTION 1. I grant to the Royal Tribunal General of the Miners the power of hearing and deciding all concerns relating to the administration, direction, and management of the body of miners, and I therefore declare that the Territorial Deputations of all the mining districts shall be fully and entirely subordinate to it in all such matters of administration.

SEC. 2. The Royal Tribunal General shall moreover take cognizance of all causes arising out of the discovery, denunciation, right of property, extent, draining, desertion, and destruction of the supports or pillars of the mines, and of all that may occur in the same to the prejudice of the operations therein, and in contravention of these Ordinances, and also of whatever relates to the supply of mines, the sale or exchange of ores, or silver and gold, of copper, lead, and other mineral substances, instruments for reducing, and of other things of the same nature ; but I declare that such power of deciding causes shall only be exercised by the said Royal Tribunal General within twenty-five leagues of the Capital of Mexico.

SEC. 3. Without detracting from the peculiar jurisdiction of administration granted to the Royal Tribunal by the first article of this section, the same power shall be exercised by the Territorial Deputations in their respective territories in causes which may occur, but only by the two deputies jointly for the support and encouragement of the mining opera-

tions in their particular district, the interest and advantage of the proprietors of mines, the preservation and increase of the population, the due administration of justice, the welfare of the inhabitants, and the relief of the poor ; be it, however, understood, that the same shall be done in an immediate subordination to the Royal Tribunal General, as directed in the said first article, with this proviso, that they are not to exercise any formal acts of jurisdiction except in such causes as are expressly referred to them by these Ordinances.

SEC. 4. The Territorial Deputation shall, in their respective districts, have the peculiar power or jurisdiction of deciding causes, which I have in the second section of this article granted to the Royal Tribunal General in all such matters as are there expressed, proceeding in and deciding the same in a manner wholly independent of the said Royal Tribunal General ; since, in the exercise of such jurisdiction, they are not to act subordinately to the said Tribunal, which is hereby prohibited from taking cognizance of, or interfering with any such causes and proceedings out of their own jurisdiction.

SEC. 5. Since all the foregoing causes and disputes are to be determined between the parties in the shortest and most summary manner, according to justice and the customary good faith of commercial transactions, without any of the usual delays and written declarations, or petitions of lawyers, it is my will that whenever any person shall appear before the Royal Tribunal, or before the Territorial Deputation of any of the mining districts, to commence an action or suit, they shall not allow any complaint or proceedings to be presented in writing until after they shall have cited before them both parties, where it is practicable to do so, and heard orally their several causes of actions, and replies or objections, and endeavored to compromise and settle the matter in dispute between them with the utmost possible dispatch ; but if they should not succeed in bringing about the arrangement between the parties, and if the subject in question shall exceed the sum or value of two hundred dollars (for all causes relating to sums not exceeding that amount are to be decided orally, whether the parties consent to it or not), then the petitions or claims in writing may be received, provided the same have neither been drawn up, arranged, or signed by lawyers ; and whenever it shall be necessary to proceed in any cause, in consequence of not having been able to arrange and settle the same orally between the parties, then the demands or requests of the complainant shall all be received and attended to previously to the hearing of any on the part of the defendant.

SEC. 6. In consideration of the object above expressed, of procuring a decision in all causes and disputes in the shortest and most summary

manner, according to justice and good faith, I hereby ordain and command, for the better attainment of that end, that in actions before the said Royal Tribunal and Territorial Deputations in the first instance, as also in causes of appeal and in the judgments to be pronounced therein, they shall pay no regard to any defect in the proceedings, or want of attention to the minute formalities of the law, or any irregularity of diction, but shall in all causes decide and judge with a strict regard to the merits of the case, and for that purpose they shall officially examine the necessary witnesses, provided they do not exceed the number of ten, and take the depositions of parties where it may be thought requisite, and shall thereupon give and pronounce their determination and judgment or sentence.

SEC. 7. In order to avoid all useless and malicious appeals, which are made for the sole purpose of preventing the course and execution of justice, I ordain that no one shall be allowed to appeal from the Judges of the said Royal Tribunal or from the said Territorial Deputations unless it be in consequence of definitive judgments or interlocutory decrees containing irreparable aggrievement, and any appeal which may be made in contravention of this article shall not be valid, and neither the Judges of the said Tribunal nor the Territorial Deputations are to admit the same, but shall proceed in the cause and pronounce their judgment or sentence definitively.

SEC. 8. All interlocutory decrees and judgments or sentences are to be signed by the Administrator General and by both the Deputies General of the Royal Tribunal, even if any one of them should dissent from the other two; for the opinion of the Administrator General and one Deputy General or that of the two Deputies General is to decide the sentence or judgment, and the one who dissents is to sign his name notwithstanding.

SEC. 9. The Territorial Deputies may each separately proceed in causes for the sake of their brevity and dispatch which are so desirable for the interests of the body of miners, but in passing and pronouncing definitive judgments or sentences and interlocutory decrees, which might cause irreparable aggrievement, they shall act in conjunction, and if they should not agree concerning the same, they shall call in the respective substitute, according to the rules already laid down, in order that the majority of opinions and such determination shall be signed by all three, as provided in the preceding section.

SEC. 10. In all points of law which are not clearly laid down in these Ordinances, the Royal Tribunal Generals shall avail themselves of the assistance of any able and conscientious lawyer whom they may select

for the purpose, and the Territorial Deputations may confer with any such person who may be in the town or place where they reside; and in case he should be objected to, or if there should be no lawyer in the place, then they shall act with the assistance of the respective Provincial Judge appointed by me, which latter is not to be objected to unless there be another person who can supply his place; and I further declare, both with regard to this and the preceding section, that any person who may have given his opinion in causes in the first instance shall not give it in the second.

SEC. 11. When the proceedings in any case are concluded, and final decision is about to take place, or at any time whenever the Judges of the Royal Tribunal or the Territorial Deputations may think it necessary, such proceedings shall be submitted to them by the Clerks of the Court before whom they were taken down who are to sum up the contents in the usual manner and with that brevity which is so desirable for the interests of the miners.

SEC. 12. The decrees and judgments or sentences of the Tribunal General and of the Territorial Deputations, if not appealed against and when they have acquired the authority of a final decision, are to be carried into effect in a short and summary manner; those of the Tribunal by their two messengers or porters, who are to exercise the functions of executive Bailiffs; and those of the Territorial Deputations by the ordinary Bailiffs of the places where they reside, and the former, as well as the latter, shall command and desire all other Judges and Courts whom it may concern to afford them any aid or assistance which they may require.

SEC. 13. In causes of appeal against any such definitive sentences or decrees, by either of the parties, where the matter in dispute shall exceed the value of four hundred dollars (for in all causes regarding a less amount no appeal shall be admissible and the decisions of the Judges of the Royal Tribunal or of the Territorial Deputations shall be finally carried into effect), those from the Royal Tribunal General shall be received by the Court of Appeals, about to be established in Mexico, and which is to be composed of a Judge of the Real Audiencia of that place, to be appointed by the Viceroy in the same manner and for the same term as the one intended for the Royal Tribunal of the Consulate or Chamber of Commerce, of the Director General of Mines, and of a proprietor of mines, who is to be elected for that purpose every third year in the General Assembly of Miners from amongst whom such as have been Administrators, Directors, Deputies General, or one of those four Advisers, who are to reside constantly in Mexico as directed in a former section; and

the appeals from the Territorial Deputations within the distance of twenty leagues in every direction from the City of Guadalajara shall be in the same manner received by the Court of Appeal, which I have ordered to be created there and which is to be composed of one of the Judges of the Real Audiencia of that place, to be appointed by the acting President thereof for the time and in the same manner as the one for the Consulate or Chamber of Commerce in Mexico, and of two proprietors of mines of known character and possessing all the requisite qualifications, who shall be appointed co-Judges of Appeal in the City of Guadalajara, from amongst those residing there in the said General Assembly of Miners to be held every three years in Mexico as before directed; but if there should not be any resident proprietors of mines in the aforesaid city possessing the necessary qualifications for such office, then others who reside elsewhere may be chosen at the said triennial election; *provided*, that under the same circumstances of eligibility preference shall be given to such as live at the shortest distance, even if they be substitutes for any mining district, and the appeals from all other Territorial Deputations shall be received in the manner prescribed by the respective Courts of Appeal to be erected in each province, and which are to be composed of the principal Provincial Judge appointed by me and of such two of the four Substitutes of Miners for the mining district as may be nearest to the residence of such Judge respectively according to the rules already laid down; and if in the same place or at an equal distance there shall reside any one or more of the twelve Advisers before mentioned, they shall by preference be appointed co-Judges of Appeal, and whenever the said Judge shall not be of the profession of law the Court in which he presides shall in all points and matters where it may be requisite avail themselves of the assistance of an able and conscientious lawyer.

SEC. 14. All such causes of appeal shall be conducted in a short and summary manner, according to the practice in commercial causes, without introducing any new terms or expressions which may give rise to unnecessary delays or proofs, or admitting proceedings and writings of able lawyers, or any others, except a statement of the cause of the appellant, and the replies of the other party or parties, with a strict regard to truth, and the customary good faith of commercial transactions; and in like manner the cause shall be decided.

SEC. 15. All such appeals are to be entered on or before the third day after the notification of the decree or sentence, and in no other manner; and they may be commenced by a letter from the appellant, stating either that he will transmit full power for carrying on the proceedings, or that he will appear in person.

SEC. 16. Whenever the Courts of Appeal shall confirm the sentence of the Royal Tribunal General of Miners or of the Territorial Deputations in the several causes, no further appeal shall be admitted, and such sentence shall be immediately carried into effect, and for that purpose shall be forthwith sent back to the respective Judges.

SEC. 17. But in case they (the Courts of Appeal) should reverse the same, either altogether or in part, and either of the litigant parties should appeal or apply for a new trial, the Judges of Appeal shall appoint in the respective cases two other co-Judges, who in Mexico are to be chosen from the four advisers residing in that capital, in Guadalaxara, from the proprietors of mines residing there, with preference to such as are advisers, if there be any in that city, and in default of either they may be chosen from the proprietors of mines residing elsewhere, regard being shown to the considerations expressed in the thirteenth section of this chapter; and in all the other Courts of Appeal the Judge may appoint any of the four respective substitutes; *provided*, however, that there be no legal objections to any such individuals, and if there should be such objections in respect to all of them, the nomination may fall on any other proprietors of mines having the necessary qualifications; observing, however, that where any one or more of the twelve advisers of the Royal Tribunal General shall reside, they shall be preferred to the substitutes.

SEC. 18. From the judgment or sentence, to be given in this third instance (whether confirming, reversing, or amending the former sentence, either altogether or in part), there shall be no further appeal, and the cause shall then be returned to the Court to which it belongs, for the fulfillment and final execution which are also to be proceeded with, in a short and summary manner, as before directed; but I hereby declare, that there shall still remain open to the parties the legal remedy of a further application to my Royal person, in my Supreme Council of the Indies, provided it shall appear that the sum in dispute amounts to \$20,000 or upwards, on finding the security required by law, and without prejudice to the execution of the sentence already pronounced, and after providing further security that they will submit to the final decision, whatsoever it may be.

SEC. 19. In the decision of the before-mentioned causes of appeal, the sentence shall be determined by two opinions out of the three, whether they be those of the Judge and one of the co-Judges of the respective Courts of Appeal, or those of the two co-Judges, without that of the presiding Judge, and in either case the same shall be signed by all three.

SEC. 20. Causes relating to possession and property shall be determined jointly (by all the Judges), and in the first place restitution shall

be made to persons who may have been forcibly dispossessed of any property ; but this shall not apply to persons who may have been deprived of possession by the decree or sentence of any Judge, even if the same shall be represented to be unjust.

SEC. 21. No mine in dispute shall, for any reasons, or on any account, be shut up, nor shall its workings be suspended, even at the request of the parties ; but an inspector shall be appointed, with the approbation of the party requiring the same, without, however, removing from the mine anything belonging to it, yet such interventor shall be dispensed with on full and sufficient security being given to the satisfaction of the opposite party, and I declare that the working a mine is then only to be suspended when the same shall be represented to be in a ruinous condition without the necessary support of timber work, and such shall appear to be the fact in the opinion of surveyors who shall immediately, without loss of time, inspect and proceed to reestablish the said works and restore them to a good condition, in order that, whenever the working shall be resumed, it may be carried on without danger.

SEC. 22. All executive demands shall be proceeded in according to law, as far as respects the order of process, but with a strict regard to truth and good faith, and without letting in any of those delays or subtleties which retard and interrupt the dispatch.

SEC. 23. Whenever it shall be necessary to carry into effect an execution in any mine or reducing establishment, the same shall not be sequestered, nor put up for sale, nor yet the machines, iron work, or tools, implements, slaves, cattle, buildings, materials, or any of the necessary stores or provisions ; but such execution shall only be put in force with regard to the gold and silver ores and other produce of the mine, after deducting what may be necessary to meet the expense of carrying on the reducing of such ores, which is by no means to be interrupted, for which purpose an interventor shall be appointed, to be approved of by the plaintiff, if the latter does not choose to undertake the management of the mine himself ; or by the defendant, in case the plaintiff shall take the same on his own account ; and such interventor is to be immediately withdrawn on the liquidation of the debts ; and in either case he shall render weekly accounts of the produce and expenses of the mine, to be in due time laid before the Judges in the cause, together with the several receipts or vouchers, and proper affidavits on such items, which cannot otherwise be verified, for the benefit of whichever party may be entitled thereto, according to the definitive judgment or sentence pronounced in the cause.

SEC. 24. If the defendant shall give up his property, and the same



shall comprise any mine or mines, notice shall be given to his creditor or creditors to undertake the working thereof on their own account, and not to suffer them to be suspended; and in default of their compliance before the expiration of the time to be fixed by these Ordinances, such mines shall be considered as deserted and abandoned, and shall belong to the first person who may denounce the same, to the exclusion of all former claims.

SEC. 25. The wages of the laborers of any mine or reducing establishment taken in execution, and the salary of the interventor, shall by no means be placed on the same footing with the other debts, but shall be paid immediately out of the first proceeds, although the whole of such proceeds should not amount to more.

SEC. 26. In case of the suspension of the working, any one of the creditors shall offer to undertake the same with his own capital, the others having refused to contribute their proportions, such creditor shall have the preference, not only in the satisfaction of his new demand, but also with respect to his former claims, even where the same may not have arisen from the supply of such mine or establishment.

SEC. 27. Whenever, in causes before other Courts, whether relating to judgments concerning inventories, hereditary succession, general partnerships, consent of creditors, or cession of property, any mines and the establishments, or other dependencies belonging to the same, are comprised amongst the other property depending in the cause, I ordain that the Judge of such Courts shall transmit an official letter, with notice thereof to the respective Court of Miners, whose duty in shall be to take care that the working of such mine or establishment be kept without prejudice to the rights or claims of the party or parties concerned; and the said Court of Miners shall reserve the proceeds thereof for the disposal of the principal Judge in such cause, and shall also, in case of any widows, minors, or absent persons being interested therein, effectually protect and support their claims, and thus maintain that firm and reciprocal union which contribute to the preservation, welfare, and prosperity of the whole body.

SEC. 28. In causes and suits relating to mines, an extension of the whole term may be granted; but be it understood, that this utmost term allowed by the law shall not take place in behalf of certain privileged persons, in which cases half of the original term may be granted.

SEC. 29. In all criminal causes, such as the purloining of ore, gold, or silver, lead, tools and implements, or any other articles belonging to the mines or the reducing establishments, offenses committed in the same, whether by one workman against another, or in consequence of any breach of subordination on their part towards the officers or captains set

over them, or by the misconduct of either of these classes towards their masters, the proprietors of the mines ; and finally, in cases of insult, contumelious language, or want of respect towards any of the Courts of Miners, the Royal Tribunal General in Mexico, or the Territorial Deputations, shall take cognizance, each in their respective districts, proceeding in and deciding such causes as are of minor importance, in the most summary manner according to law, and the nature of such offenses, with a strict regard to good faith, and in the order already established for civil causes ; but in those which, on account of their magnitude and aggravation, require by law the infliction of severe penalties, mutilation, other corporal punishments, the said Courts of Miners shall only exercise the limited jurisdiction of apprehending the criminals, drawing up the processes, and transmitting the same to the Royal Judge of the respective provinces, in order that the latter may in due time lay them before the criminal chamber of the Real Audiencia of the district for their final decision.

SEC. 30. If in such criminal causes of minor importance as are treated of in the preceding section, and the jurisdiction of which has been granted to the Courts of Miners for their cognizance and determination, provided they proceed in and decide the same in the manner directed, any parties shall appeal, they are to be entitled to all the legal remedies to be determined by the Courts of Appeal in the manner and form already prescribed with regard to civil causes, observing the order required in cases of this nature.

SEC. 31. Whenever any contentions shall arise between the Tribunal General of Miners, the territorial jurisdictions, and any other Courts or tribunals concerning the extent of their several jurisdictions, I ordain and command that the Viceroy of New Spain shall decide the same, and that his determination shall be observed and complied with without any other appeal ; and that the Viceroy shall in such cases take the opinion of learned and able lawyers not connected with either of the Courts between whom such question may have arisen.

SEC. 32. I expressly prohibit the arbitrary application of the pecuniary fines to be imposed by any of the Courts of Miners, in the exercise either of the criminal or civil jurisdiction granted to them, and I ordain that they shall be applied in equal third parts to my Royal Exchequer, the expenses of justice, and to such further objects as by law directed.

SEC. 33. The Administrator and the Deputies General shall assemble in Court every day (except on holy days and those on which it is necessary to hear Mass), from the hour of eight to that of eleven, and also on

extraordinary occasions in the evening, and on any day whatever when the urgency and importance of any affair may require it.

SEC. 34. The Director General shall have a vote in all matters relating to the direction, administration, and management, the jurisdiction of which has been granted to the Royal Tribunal General in Mexico, and due and special notice shall be sent to him on all such occasions to attend ; but I declare that he shall have no vote in the substantiation and determination of any pleadings or suits, except only in causes before the Court of Appeal in Mexico, of which he has been appointed a member.

SEC. 35. All matters relating to public works or supplies, to those of the roads or highways, and other objects of the same nature, are to be under the peculiar cognizance and jurisdiction of the Royal Judges and Magistrates of each district, but the Royal Tribunal General in Mexico and the Territorial Deputations shall give such instructions as they may deem expedient to the said Judges and Magistrates, in order that all such works and supplies may be regulated and proportioned in the most fair and equitable manner, proceeding therein with a mutual understanding and acting in concert together.

SEC. 36. All taxes and duties, or imposts, as well public as private, between individuals of the mining body, which immediately affect the advancement and working of the mines and reducing establishments, the remuneration or salaries of those who compose the territorial jurisdictions of miners, and of persons appointed to any of the new offices or situations treated of in these ordinances, are to be proposed and regulated by the Royal Tribunal General in Mexico, and by the Territorial Deputations, each in their respective districts, but the latter shall be obliged to lay them, together with the requisite proofs or attestations, before the Royal Court of the district for their sanction, but such taxes, duties, and imposts shall not be established or carried into effect without having been previously submitted to the Viceroy of New Spain, in order that, after the necessary inquiries respecting them by his superior power, they may be laid before me for my sovereign determination, for which purpose a report thereof shall be transmitted to me by the Viceroy.

SEC. 37. The Royal Tribunal General in Mexico shall also immediately lay before the Viceroy an exact estimate of the salaries to be allowed to the principal individuals filling offices in the Tribunal, and of the inferior officers appointed or to be appointed in pursuance of these Ordinances, in order that the same may be referred to me by the Viceroy, with his remarks thereon, for my royal approbation, which is necessary to the secure establishment of the said Tribunal.

## CHAPTER IV.

ORDER OF PROCEEDING IN LAW SUITS IN CASES OF A VACANCY OR NECESSARY ABSENCE OF ANY OF THE JUDGES OR OF THEIR REFUSAL.

SECTION 1. The Royal Tribunal General of the Mines shall not enter upon any business which is in litigation without the assembling of three of its members; and if at any time on account of illness, necessary absence, or any other just and lawful impediment whatsoever, as by the Judge being interested in the question, or by his being related to any of the litigating parties, that number of Judges cannot be assembled, such of the advisers residing in the capital of Mexico as are properly eligible to the same office by the rules already laid down, and the proper number shall be thus completed; and the same thing shall be done with regard to the number of the Judges of Appeal, which is never to be less than three, according to what has already been laid down in these Ordinances, and whenever in consequence of any of the before-mentioned impediments any one of the Territorial Deputies cannot or ought not to be Judge in any such litigated cause, his place shall be supplied by the proper substitute accordingly.

SEC. 2. I prohibit the absolute refusal of all the Judges of the Royal Tribunal General, and of those of Appeals, but one or two particular members may refuse, assigning reasons and giving security, it being understood that those refusing shall not be heard, or any refusal admitted, after a determination has been made concerning them.

SEC. 3. In the same manner the two Territorial Deputies acting as Judges of the Mines shall not refuse though either of them may.

SEC. 4. In cases where the refusal shall be lawful and admitted, whether in causes in the first instance, or in those before the Courts of Appeal, the vacancy shall be filled up in the first instance according to the first section of this present chapter, and in the latter by the appointment of the respective Judges of Appeal according to section seventeen of chapter three of these Ordinances.

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CHAPTER V.

ORIGINAL OWNERSHIP OF MINES, GRANTS TO INDIVIDUALS, AND THE DUTIES TO BE PAID.

SECTION 1. The mines are the property of my royal crown, as well by their nature and origin as by their reunion declared by the fourth law of

the thirteenth title of the sixth book of the new compilation of laws and statutes.

SEC. 2. Without separating them from my royal patrimony, I grant them to my subjects in property and possession in such manner that they may sell, exchange (pass by will either in the way of inheritance or legacy), or in any other manner dispose of all their property in them upon the terms on which they themselves possess it, and to persons legally capable of acquiring it.

SEC. 3. Be it understood that this grant is made upon two conditions: first, that they (my subjects) shall pay to my Royal Treasury the proportion of metal reserved thereto; and secondly, that they shall carry on their operations in the mines subject to the provisions of these Ordinances, on failure of which at any time the mines of persons so making default shall be considered as forfeited and may be granted to any person who shall denounce them accordingly.

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## CHAPTER VI.

### MANNER OF ACQUIRING MINES; NEW DISCOVERIES; REGISTERS AND DENOUNCEMENT.

SECTION 1. As it is most just and proper to reward with particularity and distinction those persons who devote themselves to the discovery of new mineral places and metallic veins found therein in proportion to the importance and utility of such discovery, I order and command that the discoverers of one or more mineral mountains, wherein no mine or shaft has been opened before, acquire in the principal vein as much as three portions, together or separate where it best pleases them, according to the measures hereafter signified; and that on having discovered more veins, they shall acquire a portion in each vein, fixing on and marking the said portions within the term of ten days.

SEC. 2. The discoverer of a new vein in a mountain known and worked in other parts may hold in it two portions together or separated by other mines, on condition that he specifies them within ten days, as mentioned in the preceding section.

SEC. 3. He who proposes for a new mine in a vein already known and worked in part is not to be considered a discoverer.

SEC. 4. The persons referred to in the preceding sections must present a written statement to the Deputation of Miners in that district, or in

case there should not be one in that district, to the nearest thereunto, specifying in it his name, those of his associates (if he has any), the place of his birth, his place of habitation, profession, and employment, together with the most particular and distinguishing features of the tract, mountain, or vein of which he claims the discovery; all which circumstances, as well as the hour in which the discoverer shall present himself, must be noted down in a register kept by the Deputation and Clerk (if they have one); and after this, the said written statement shall, for his due security, be restored to the discoverer, and notices of its object and contents shall be affixed to the doors of the church, the government-houses, and other public buildings of the town for the sake of general notoriety.

And I ordain that within the term of ninety days the discoverer shall cause to be made in the vein or veins so registered a pit of yard and a half in diameter or breadth and ten yards (*varas*) in depth, and that immediately on the existence of the vein being ascertained one of the Deputies in person shall visit it, accompanied by the Clerk (if there is one), or if there be no Clerk, by two assisting witnesses, and by the Mining Professor of that territory, in order to inspect the course and direction of the vein, its size, its inclination on the horizon, called its falling or declivity, its hardness or softness, the greater or less firmness of its bed, and the principal marks and species of the mineral; taking exact account of all this in order to add the same to the entry in the register, together with the act of possession, which must immediately be given to the discoverer in my Royal name, measuring him his portion, and making him inclose it by poles at the limits as hereafter declared; after which an authentic copy of the proceedings shall be delivered to him for the security of his title.

SEC. 5. If during the above named ninety days any one should appear asserting a right to the said discovery, a brief judicial hearing shall be granted, and judgment given in favor of him who best proves his claim; however if this should happen after the stated time he (the new claimant) shall not be heard.

SEC. 6. The restorers of ancient mines which have been abandoned and left to decay, shall enjoy the same privileges as discoverers, of choosing and possessing three portions in the principal vein and one in each of the others, and both revivers and discoverers shall, as an especial reward, be on all occasions preferred to other persons under parity of circumstances.

SEC. 7. If there arises any question as to who has been the first discoverer of a vein, he shall be considered as such who first found metal therein, even though others may have made an opening previously; and

in case of further doubt, he who first gets it registered shall be considered as the discoverer.

SEC. 8. Whoever shall denounce in the terms hereafter expressed any mine that has been deserted and abandoned shall have his denouncement received, if he therein sets forth the circumstances already declared in section four of this chapter, the actual existence of the mine in question, the name of its last possessor, if he is acquainted with the same, and those of the neighboring miners, all of whom shall be lawfully summoned, and if within ten days they do not appear, the denouncement shall be publicly declared on the three following Sundays; this meeting with no opposition, it shall be signified to the denouncer that within sixty days he must have cleared and reinstated some work of considerable depth, or at least of ten yards perpendicular and within the bed of the vein, in order that the Mining Professor may inspect its course and inclination and all its peculiar circumstances as is declared in the above-named section four. The said Professor should, if it is possible, examine the pits and works of the mine and see if they are decayed, destroyed, or inundated; whether they contain a draft pit or adit or are capable of such; whether they have an outer court, a whim, machines, rooms for habitation, and stables; and an account and register of all these circumstances must be entered in the corresponding book of denouncements, which should be kept separately. And the said examination being made, the portions being measured and bounded by stakes in the ground, as shall hereafter be explained, possession of them shall be given to the denouncer, without regard to any opposition, which cannot be attended to unless made within the term before described; however, if during that time any opposition is brought forward the parties shall have a brief judicial hearing and the cause be determined accordingly.

SEC. 9. If the former mine owner should appear in order to oppose the denouncement when the three public proclamations are over and when the denouncer has commenced the sixty days allowed for reinstating the pit of ten yards, he shall not be heard as to the possession, but only as to his right in the property; and if he succeeds in establishing this, he must make good the expenses incurred by the denouncer, unless the latter is proved to have acted fraudulently, in which case he must lose such expenses.

SEC. 10. If the denouncer does not make or complete the shaft as prescribed, nor take possession within the sixty days, he loses his right, and any other person has the power of denouncing the mine. If, however, from the ground being entirely broken up or otherwise difficult and impracticable, or for any other real and serious obstacle he has been unable

to complete the same within the said sixty days, he must have recourse to the respective Territorial Deputation, when his difficulties being examined and proved, the period may be prolonged for as long a time as the Deputation may think necessary for the purpose, and no more; no opposition to his claim being admitted after the ordinary term of sixty days.

SEC. 11. If any one denounce a mine as forfeited on account of the non-observance of any of these Ordinances which bear that penalty, such claim shall be allowed to him, provided he can lawfully establish any such cause of forfeiture.

SEC. 12. If the former possessor of the mine, or any person claiming in right of him, shall declare the having left therein any exterior or movable works made at his expense, such as coverings of outer courts, machines, or other things of this class, and of which the denouncer may usefully avail himself, he shall be paid for them according to the valuation of surveyors.

SEC. 13. If any one shall denounce any intermediate space in the vicinity of mines already occupied, it can only be granted him in case the owners of the adjoining mines, or any of them, should not desire it for themselves; however, if these persons have not occupied it, or shall not do so within the time which the Deputations of that Territory, after considering the circumstances of the case, shall prescribe, it shall be adjudged to the denouncer.

SEC. 14. Any one may discover and denounce a vein not only on common land but also on the property of any individual, provided he pays for the extent of surface above the same and the damage which immediately ensues therefrom, according to the valuation of surveyors on both sides and arbitration in case of disagreement; the same is to be understood with regard to denouncing convenient places for erecting establishments, and also waters for moving the machines employed for the reduction of ores, commonly called reducing establishments, provided in each case that no more of the water be used than is necessary for such purposes.

SEC. 15. If, however, any one denounces a mine or establishment within a town or village, whereby its principal edifices might be injured, or other similar inconvenience might arise, the denouncement shall not be admitted without previous application to the Royal Tribunal General of Mexico, in order that they, after consulting with the Supreme Government, may determine the case with all due prudence and circumspection.

SEC. 16. Any one may denounce the ancient site of an establishment, without paying anything for the same, although there may be found thereon walls, drains, yard, washing-places, furnaces, chimneys, dwelling-



houses, etc., provided they are totally deficient in roofs, machines, tools, and timber work; if these latter exist the former proprietor must have notice sent him to reestablish, sell, or let them, within the space of four months, and on his failure to do so, they shall be granted to the denouncer, on condition of his paying the said proprietor for useful movables, according to the appraisement and judgment of surveyors.

SEC. 17. I prohibit any one (not being the discoverer) from denouncing two contiguous mines upon one and the same vein; but I permit any person to acquire and possess one by denouncement, and another or more by purchase, gift, inheritance, or other just title. And I further declare that if any one desires to attempt the reestablishment of several inundated or decayed mines, or other considerable enterprise of this kind, and for this purpose claims the grant of several portions, although they be contiguous and upon the same vein, such claim must be laid before the Royal Tribunal General of Mexico, in order that the circumstances and importance of the undertaking being ascertained, they may acquaint the Viceroy therewith, who, on finding therein nothing prejudicial to the body of the miners, the public, or my Royal Treasury, shall grant him this and other privileges, exemptions, and aids, on condition that my Royal approbation is previously obtained to all such favors, which cannot be granted by the ordinary authority of the Viceroy.

SEC. 18. Beds of ore and other depositories of gold and silver, on being discovered, shall be registered and denounced in the same manner as mines or veins, the same being understood of all species of metal.

SEC. 19. Inasmuch as the waste ground and earth heaps of abandoned mines are generally the support of the widows and orphans of the working miners, the old men, and invalids, and all other distressed persons of that employment, and even of all the inhabitants of the district, when the mines are not in a course of working, I prohibit any individual from denouncing them, in order to appropriate them to himself, unless he at the same time denounces the mines to which they belong.

SEC. 20. The same prohibition is to be understood with regard to the dross, rubbish, and refuse of those smelting houses and establishments of which nothing is left but the walls; but I order that if they have an owner, notice shall be given to him, and a certain time allowed in which if he does not avail himself of the vessels and other remains, nor the community derive any benefit therefrom, they shall be granted to any person denouncing them.

SEC. 21. Though in the regular veins, or in the banks, beds, or other mineral depositories great natural masses of virgin gold and silver may be found, I declare that the owners of the mines are to acquire and

possess them, on paying the just duties ; and I also declare that only ancient deposits of money or jewels, of ingots or grains, and any other fragments smelted by man, and buried by thieves, or in any other manner from time immemorial, so that the owner thereof is unknown, shall be retained as treasure.

SEC. 22. I likewise grant that, in the prescribed form, may be discovered, claimed, registered, and denounced, not only mines of gold and silver, but also those of precious stones, copper, lead, tin, quicksilver, antimony, zinc, bismuth, rock salt, or other fossils, whether perfect or mixed metals, bitumen or other production of the earth, the denouncers thereof receiving grants of the same, according to the circumstances ; but I declare that although the free discovery and denouncement of the quicksilver mines is permitted, it must be on the express condition of giving an account of them to the Viceroy, and of the sub-delegate of the quicksilver mines of Mexico, in order that it may be considered and determined whether the said mine or mines shall be worked at the expense and for the advantage of that individual who discovered and denounced them, on his punctually delivering all the quicksilver extracted from them into the royal storehouses, under the terms and prices stipulated ; or whether it shall be done on the account of my Royal Treasury, indemnifying the party by some equitable award, having regard to the circumstances of the said discovery and denouncement, the whole of this important subject being regulated according to my sovereign intentions recently declared upon this subject.

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## CHAPTER VII.

PERSONS WHO MAY OR NOT DISCOVER, DENOUNCE, AND WORK THE MINES.

SECTION 1. To all the subjects in my dominions, both in Spain and the Indies, of whatever rank or condition they may be, I grant the mines of every species of metal under the conditions already stated, or that shall be expressed hereafter, but I prohibit foreigners from acquiring or working mines as their own property, in these my dominions, unless they be naturalized or tolerated therein by my express royal license. [See Decree of President Comonfort.]

SEC. 2. I also prohibit regulars of religious orders, of both sexes from denouncing, or in any manner acquiring for themselves, their convents, or communities, any mines whatever ; it being understood that the work-

ing of the mines shall not devolve upon the secular ecclesiastics, as being contrary to the laws, to the orders of the Mexican Consul, and to the sanctity and exercise of their profession; and therefore, in consequence of this prohibition, all such secular ecclesiastics shall be expressly obliged to sell or place in the hands of lay subjects, the mines or establishments for smelting ore, and reducing establishments which have devolved on them by inheritance or other cause, the same being completed within the term of six months, or within such time as may be considered necessary to insure a useful result, which is to be fixed by the Viceroy, with a previous intimation to the Royal Tribunal General of the Mines, provided, that if it is ascertained that by artifice or fraud the effects of this article are attempted to be eluded, to the prejudice of the working of such mines and establishments, in which the State is so much interested, they shall be denounced and disposed of in the same manner as mines in general.

SEC. 3. Neither shall mines be held by Governors, Intendents, Mayors, Chief Judges, nor any other public officers whatever, of the mine towns and districts, nor their clerks; but I permit such persons to hold mines in any territory out of their own jurisdiction.

SEC. 4. Neither shall Administrators, Stewards, Overseers, Keepers of Tallies, Workers or Watchers of Mines, nor, in general, any person in the service of mine owners, whether of superior or subordinate class, be permitted to register, denounce, or in any other manner acquire mines within the space of a thousand yards round those of their masters, but I allow them to denounce any mine for their said masters, even though not authorized by them to do so, provided the aforesaid masters make good the denouncement in the terms prescribed by section eight of chapter six of these Ordinances.

SEC. 5. No one shall denounce a mine under any circumstances of concealment or fraud for another, nor even publicly, unless he has his power or letter of attorney for that purpose, according to established usage.

SEC. 6. Neither shall one denounce a mine for himself alone, if he has previously had partners in the transaction; and I ordain that the denouncer shall declare his partners in his written statement, under penalty, if he fail so to do, of losing his share thereof.

## CHAPTER VIII.

## PROPERTIES, INTERMEDIATE SPACES, AND MEASURES.

SECTION 1. Experience having shown that the equality of the mine measures established on the surface cannot be maintained under ground, where in fact the mines are chiefly valuable, it being certain that the greater or less inclination of the vein upon the plain of the horizon must render the respective properties in the mines greater or smaller, so that the true and effective impartiality which it has been desired to show towards all subjects, of equal merit, has not been preserved; but on the contrary, it has often happened that when a miner, after much expense and labor, begins at last to reach an abundant and rich ore, he is obliged to turn back, as having entered on the property of another, which latter may have denounced the neighboring mine, and thus stationed himself with more art than industry. This being one of the greatest and most frequent causes of litigation and dissension among the miners, and considering that the limits established in the mines of these kingdoms, and by which those of New Spain have been hitherto regulated, are very confined in proportion to the abundance, multitude, and richness of the metallic veins which it has pleased the Creator of his great bounty to bestow on those regions, I order and command that in the mines where new veins, or veins unconnected with each other, shall be discovered, the following measures shall in future be observed.

SEC. 2. On the course and direction of the vein, whether of gold, silver, or other metal, I grant to every miner, without any distinction in favor of the discoverer, whose reward has been specified, two hundred yards, called measuring yards, taken on a level, as hitherto understood.

SEC. 3. To make it what they call a square, that is, making a right angle with the preceding measure, supposing the descent or inclination of the vein to be sufficiently shown by the opening or shaft of ten yards, the portion shall be measured by the following rule.

SEC. 4. Where the vein is perpendicular to the horizon (a case which seldom occurs), a hundred level yards shall be measured on either side of the vein, or divided on both sides, as the miner may prefer.

SEC. 5. But where the vein is in an inclined direction, which is the most usual case, its greater or less degree of inclination shall be attended to in the following manner.

SEC. 6. If to one yard perpendicular the inclination be from three fingers to two palms, the same hundred yards shall be allowed for the square (as in the case of the vein being perpendicular).

SEC. 7. If to the said perpendicular yard there be an inclination of 2 palms and 3 fingers, the square shall be of  $112\frac{1}{2}$  yards.

2	"	"	6	"	"	"	"	"	"	125	"
2	"	"	9	"	"	"	"	"	"	$137\frac{1}{2}$	"
3	"	"	"	"	"	"	"	"	"	150	"
3	"	"	3	"	"	"	"	"	"	$162\frac{1}{2}$	"
3	"	"	6	"	"	"	"	"	"	175	"
3	"	"	9	"	"	"	"	"	"	$187\frac{1}{2}$	"
4	"	"	"	"	"	"	"	"	"	200	"

so that if to one perpendicular yard there correspond an inclination of four palms, which are equal to a yard, the miner shall be allowed two hundred yards on the square on the declivity of the vein, and so on with the rest.

SEC. 8. And supposing that in the prescribed manner any miner should reach the perpendicular depth of two hundred yards, without exceeding the limits of his portion, by which he may commonly have much exhausted the vein, and that those veins which have greater inclination than yard for yard, that is to say, of forty-five degrees, are either barren or of little extent, it is my sovereign will that although the declivity may be greater than the above-mentioned measures, no one shall exceed the square of two hundred level yards; so that the same shall be always the breadth of the said veins extended over the length of the other two hundreds, as declared above.

SEC. 9. However, if any mine owner suspecting a vein to run in a contrary direction to his own (which rarely happens), should choose to have some part of his square in a direction opposite to that of his principal vein, it may be granted to him, provided there shall be no injury or prejudice to a third person thereby.

SEC. 10. With regard to the banks, beds, or any other accidental depositories of gold or silver, I ordain that the portions and measures shall be regulated by the respective Territorial Deputations of Miners, attention being paid to the extent and richness of the place and to the number of applicants for the same, with distinction and preference only to the discoverers; but the said Deputations must render an exact account thereof to the Royal Tribunal General of Mexico, who will resolve on the measures which they in their judgment may consider the most efficacious, in order to avoid all unfair dealing in these matters.

SEC. 11. The portions being regulated in the manner described above, the denouncer shall have his share measured at the time of taking possession of the mine, and he shall erect round his boundaries, stakes or landmarks, such as shall be secure and easy to be distinguished, and enter

into an obligation to keep and observe them forever without being able to change them; though he may allege that his vein varied in course or direction (which is an unlikely circumstance); but he must content himself with the lot which Providence has decreed him, and enjoy it without disturbing his neighbors; if, however, he should have no neighbors, or if he can, without injury to his neighbors, make an improvement, by altering the stakes and boundaries, it may be permitted him in such case, with the previous intervention, cognizance, and authority of the Deputation of the District, who shall cite and hear the parties, and determine whether the causes, for such encroachment are legitimate.

SEC. 12. In the mines already opened and worked, the old measures of the portion shall be retained; but they may be extended to the limits prescribed in these Ordinances, whenever such change can take place without prejudice to third persons.

SEC. 13. The immutability of the stakes or boundaries already defined in section eleven of this chapter shall also be observed henceforward in those mines which are in the course of working, or which shall be denounced as deserted or lost, the limits being ascertained in those cases where there are none at present, and each being attended to in their order, beginning with the oldest; and as to any intermediate spaces, they shall be regulated according to the provisions of section thirteen, chapter six.

SEC. 14. As it has been found that the license or permission of following a vein by working lower down and within the vein, and having enjoyment thereof, until the owner himself has bored it, has been and is the most fruitful cause of bitter dissensions, litigations, and disturbances among the mine owners; and further considering that such intrusion is more generally the result of fraud or chance than of the merit and industry of the person so intruding, and that the consequences thereof occasion, for the most part, nothing but serious detriment to, or the total ruin of, the two mines and the two neighboring miners, to the great prejudice of the public, and of my Royal Treasury, I order and command that no mine owner shall enter the property of another, even though merely by continuing his own vein at a greater depth, but that every one shall keep and observe his own boundaries, unless he makes an agreement and stipulation with his neighbor, to be permitted to work in his property.

SEC. 15. But if a mine owner, pursuing his operations fairly, comes to the property of another while in pursuit of a vein which he is working, or discovers it at that time, without the master of the property being aware of its existence, he shall be obliged to give such proprietor immediate notice thereof; and the two neighbors shall thenceforward divide the costs and profits equally between them: one for the merit of the discov-

ery, and the other as the owner of the property ; all which, until there shall be a communication effected between the mines, either by the principal vein, or a cross lode, or in any manner that may be most convenient ; whereupon, after erecting a mutual boundary, each proprietor shall remain within his own boundaries. But if any one so discovering and following a lode, into the property of his neighbor, fails to give immediate notice thereof to such neighbor, he shall not only lose his right to the half of all the metal that may be extracted, but also shall pay double the value of what he has already extracted, it being understood, that before exacting this penalty, fraud and misconduct of persons so encroaching must be proved in the plainest and most satisfactory manner, according to the form prescribed in chapter third.

SEC. 16. And in case a mine owner shall have advanced so much in his subterranean operations as to have passed beyond the limits of his own property, whether in length or square measure, I declare that he shall not, on this account, be obliged to turn back or suspend his work, provided the ground he has entered be unclaimed, or within the limits of a deserted mine ; he must, however, denounce this new property, which shall be granted him, observing always that such new portion must not exceed its former size, and that he must move his boundary marks to his new limits, in order that they may be generally known.

SEC. 17. The mine owner shall not only possess a portion of the principal vein which he denounced, but likewise of all those which in any form or manner whatever are to be found in his property ; so that if a vein takes its rise in one property, and passing on, terminates in another, each proprietor shall enjoy that part of it which passes through his particular limits, and no one shall be entitled to claim entire possession of a vein from having its source in his portion, or on any other pretense whatever.

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## CHAPTER IX.

### WORKING, SUPPORTING, AND PROTECTING MINES.

SECTION 1. It being of the greatest importance that the lives of workmen and other persons obliged continually to enter and go out of the mines should not be endangered, and that the mines should be kept in the state of security and convenience necessary to their being successfully worked, even although they may have been judged useless and impracticable by their first possessors, and abandoned accordingly ; and it not being possible

to establish any general and absolute rule on the subject, on account of the variety of circumstances of each mine, the greater or less hardness, tenacity, and adherence of the sides, and of the substance of the vein itself; its greater or less inclination, width, and depth, inducing much diversity in the size and number of the pillars, arches, beams, cross-beams, and other props which may be left or constructed to support the sides, and also in the distribution of the works necessary to proper ventilation, and the convenient removal of the substances extracted from the mine—all of which cannot be effected without true practical skill and science in the working of mines—I ordain and command as follows :

SEC. 2. It shall not be permitted to any one to work the mines without the assistance and direction of one of those able and intelligent surveyors, who are called in New Spain, miners, or mine-watchers, who must have been examined, qualified and approved by the Mining Professor, appointed to be in every mine town or district, of whom mention will be made hereafter. (Chapter 18, Section 1.) However, in the very poor and remote mine towns, where there may be neither Mining Professor, nor qualified and approved surveyor, they may be allowed to proceed under the direction of the most accredited and intelligent surveyors who can be found there, until these or others shall be examined and licensed; the same being understood in all cases which require the direction or intervention of a surveyor, in order that, in judicial proceedings, they may meet with the confidence and credit they deserve.

SEC. 3. For the design and execution of shafts, levels, or adits, and other great and difficult works, which, if they do not turn out successfully, render useless the great expenses which have been bestowed upon them, the direction of one or more of the Guardaminas, shall not be sufficient, but the inspection or intervention of one of the aforesaid Professors of Mining shall be necessary, with the obligation on his part of visiting the work once every month, or once in two months, as the progress of it may require, in order that, if he perceives any error in the execution, he may amend it in time, and before it occasions further expenses.

SEC. 4. In mines opened on a vein of which the sides and interior substance are soft, and have so little tenacity, or adhesive property, that on being exposed to the air they moulder away, and open into cracks and crevices, or which, from any other causes are perceived to be insufficient by themselves to maintain the security and firmness of the mine, I ordain and command that the works shall be lined and secured with large solid timber of known durability, and such as is least liable to decay under ground, cut and prepared according to the rules of art; or with good



mason work of stone and mortar, if the value and other circumstances of the mine permit or require it; for which purpose there must be in all the mining places, towns, and districts, a certain number of those artificers, carpenters, and masons, who are called liners, and these must have journeymen and apprentices, in order to preserve and continue the exercise of this important business, which ought to be well paid and encouraged.

SEC. 5. In order to prevent the introduction of artificers who have not the requisite experience and intelligence in subterranean architecture, none shall be admitted (*in any place*), who have not been examined and approved by the Mining Professor of that place, or some other.

SEC. 6. If any mine owner, in consequence of the great richness of the metallic substance in his vein, is desirous of substituting for the pillars, beams, or sufficient and necessary supports, made of the metallic substance itself, others constructed of mason work of stone and mortar, he may be permitted to do so, under the inspection of one of the deputies of the district, assisted by his clerk, and with the approbation of the Mining Professor.

SEC. 7. I strictly prohibit any one from taking away, or in any degree weakening and diminishing the pillars, beams, and necessary supports of the mines, under pain of ten years' imprisonment, to be inflicted according to the form prescribed by chapter three of these Ordinances, by the respective judge in each case, upon any workman, searcher, or investigator, who shall have committed such offense, and the same upon the Miner or Mine watcher who has permitted it; and the master of the mine shall lose the same, together with half of his property, and be forever excluded from all mining employments.

SEC. 8. I ordain and command that the mines shall be kept clean and unobstructed, and that the works necessary or useful for the circulation of air, the carriage and extraction of the metal or other purposes, although they may contain no more metallic matter than such as may remain in the pillars and partitions, shall not be incumbered with rubbish and clods of earth, but that all these must be carried out and thrown by each person on the earthmound of his own property, but on no account upon that of another person without his express leave and consent.

SEC. 9. In the mines there must be proper and safe steps or ladders, such and as many as are considered necessary by the Mining Surveyor, for the purpose of ascending and descending to the farthest works, so that the lives of persons employed in the mines may never be endangered by their being weak, insecure, rotten, or much worn.

SEC. 10. In order to avoid the violation of the provisions of any of the sections contained in this chapter, it is my sovereign will that the Deputies of the miners, accompanied by the Mining Professor of the district, and by the Clerk, if there be one, or, in default him, by two witnesses in aid, who shall once in every six months, or once in every year, in places where the former is impracticable, visit all the mines in their jurisdiction which are in a course of actual working ; and if they find any failure in the points referred to in the above-mentioned sections, or in any others whatever, which regard the security, preservation, and better working of the mines, shall provide immediately a remedy for such defect, and take means to assure themselves that such remedy is carried into effect. And if the remedy be not applied, or if the same failure shall occur again, the proper penalties must be exacted, multiplying and aggravating them even to the extent of dispossessing the person so offending of the mine, which shall then belong to the first person who may denounce it, provided the Deputies proceed in the form prescribed by chapter third of these Ordinances.

SEC. 11. I most rigorously prohibit all persons from piercing through adits, or cross levels, or other subterraneous passages, from works which are higher and full of water, or from leaving between them and others such slight supports as may allow the water to burst through ; on the contrary, persons owning such works must have them drained by engines before they shall attempt to communicate with new ones, unless the Mining Professor should judge that such piercing through will not be attended with danger to the workmen engaged in it.

SEC. 12. Also I prohibit all persons from introducing workmen into any works containing noxious vapors, until they have been properly ventilated, according to the rules of art.

SEC. 13. Whereas, the mines require incessant and continual working, in order to procure the metals, certain operations being indispensable, which cannot without much time be accomplished, and which, if interrupted, generally require as great expenses in their reestablishment as they did in their original undertaking ; wherefore, to remedy such inconvenience, and also to prevent masters of mines, who either cannot or will not work them, from keeping them in a useless state for a length of time, by pretending to work them, and thus depriving them of the real and effective labor which others might bestow on them, I ordain and command, that whosoever, during four successive months, shall fail to work any mine with (at least) four paid workmen, occupied in some exterior or interior work of real utility, shall, by so doing, lose all his right in said mine, which shall belong to any person denouncing it, upon his satisfac-

tory proving, according to the provisions of chapter six, such act of desertion on the part of the owner.

SEC. 14. Experience having shown that the provisions of the preceding section have been eluded by the artful and fraudulent practice of some owners of mines, who cause their mine to be worked during some days in each [interval of] four months, keeping them in this manner many years in their possession, I ordain that whosoever shall fail to work his mine in the manner prescribed by the said section, during eight months in the year, counting from the day of his coming into possession, even though the said eight months should be interspersed with some days or weeks of labor, shall by such labor, forfeit the mine; and it shall be adjudged to the first person who denounces the same, and satisfactorily proves this second species of desertion; unless for this, or the one mentioned in the preceding section, there be just cause assigned, such as pestilence, famine, or war, in that same mining place, or within twenty leagues thereof.

SEC. 15. Considering that many mine owners, who have formerly worked their mines with ardor and diligence, expending large sums in shafts, adits, and other undertakings, may often be obliged to suspend their operations, while soliciting supplies, or for want of workmen, or necessary provisions, and other just and sufficient causes, which, combined with their former merit, render them worthy of equitable consideration, I declare that any such mine owner, keeping his mine in disuse in the manner and for the time above-mentioned, shall not forfeit it at once in the manner described above, but his mine shall nevertheless be liable to denouncement before the respective new Tribunals of Miners, in order that both parties having been heard, and alleged merits and causes considered and proved, justice may be done between the parties.

SEC. 16. Since many mine owners abandon their mines, either for the want of the capital necessary for carrying on operations therein, or because they do not choose to consume that which they may have already acquired from them, or because they have not spirit to venture on the difficulties of those undertakings, from which they may have conceived great hopes, or for other causes; and since persons are not wanting who might be desirous of taking such mines, if they were informed of their intended abandonment, and as it is much easier to maintain a mine when in a course of working than to reinstate it after it has suffered the injuries of time, it is my will that no person shall abandon the working of his mine or mines without making the Deputation of the district acquainted therewith, in order that the Deputation may publish the same, by fixing a notification on the doors of churches and other customary places, for the information of all persons.

SEC. 17. In order to avoid the false or equivocal reports which are often spread concerning deserted mines, the consequence of which reports is to augment the distrust in which this profession is ordinarily held, deterring many persons from engaging therein who do not otherwise want inclination to follow it, I ordain :

SEC. 18. That no one shall abandon the working of his mine without giving notice to the respective Deputation, in order that an inspection may immediately be had thereof by the Deputies, accompanied by the Clerk and Surveyors, who must examine and measure the mine, particularizing all its circumstances, and draw up a map describing its plan and outlines, which, together with all the necessary information, must be preserved in the Archives, with liberty of access to all persons who may wish to see it, or to take a copy thereof.

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## CHAPTER X.

### DRAINS IN MINES.

SECTION 1. As in most of the mines springs and currents frequently occur, from whence the water issues continually, and in such abundance as might, in a short time, inundate and overwhelm the works, to the hindrance of all progress in the extraction of the metals, I desire and command that the owners of such mines shall keep their works constantly drained and evacuated, so that at all times the operations may be carried on, and the metals extracted without interruption.

SEC. 2. As it is much the most convenient and least expensive method of draining to countermine the veins by means of adits, I ordain that in all those mines which require draining, and whose situation will admit of it, and where benefit is likely to arise therefrom, according to the judgment of the Mining Professor of the district, the owners be obliged to make an adit sufficient for the draining and clearing of the works, provided the richness and abundance of the ores are likely to repay such expense.

SEC. 3. Whereas, several mines may sometimes be drained and cleared by one and the same adit, though each of them singly might be insufficient to support the expense thereof, I declare that the adit shall be made and completed, and the expense divided among all the proprietors in proportion to the benefits they will each derive from it; and if this proportion cannot at the time be ascertained, the expense shall be

divided among them, in the mean time, in equal parts, such parts being fixed according to the sum which the poorest of them can afford to pay, and should this one improve in condition, then the said part shall be regulated according to what the poorest of the others can pay, so that the works of the adit may not be suspended; and all these points must be estimated and regulated by the Deputation of the district, according to the judgment of the respective Mining Professors.

SEC. 4. If any individual should offer to make an adit by which one or more veins, or the mines opened in them, might be drained and cleared, although he be not the proprietor of any of them, either entirely or in part, his denouncement shall be received in due form, and immediate notice given to the owners of said mines, who, if they will undertake such work themselves, are always to have the preference; but, on their refusal, it shall be assigned to the adventurer under the following conditions:

SEC. 5. That the adit be really useful, and its formation practicable, according to the judgment of the Mining Professor, who must be charged with the tracing out and determining the plan of the work and directing its execution in the manner above expressed.

SEC. 6. That the countermine shall be drawn, as far as it is possible, in a right line, and at the least possible distance from the vein or veins intended to be drained and cleared, or in the line and direction of one of them.

SEC. 7. That the necessary openings for the admission of air be constructed, or that a counter level be made, or some other means adopted to preserve a free circulation of air for the health and advantage of the workmen.

SEC. 8. That its size (the size of the adit) must depend on the judgment of the Mining Professor, which will be regulated by circumstances; but that it shall never exceed two yards in width, and three in height, and that it be properly secured and lined.

SEC. 9. That if the adventurer, in the progress of his work, meets with one or more new veins, he shall therein enjoy the right of a discoverer, and the reward which is assigned to him as such by these Ordinances; but if they are already known and opened in other places, I grant him the liberty of acquiring one portion of each of them, and if there be not sufficient space remaining for that purpose, he shall have the enjoyment of all that may remain, until he enters upon the property of another.

SEC. 10. That if the work should pass through any deserted mines, the adventurer shall thereby become master of the same, and may denounce them as soon as he projects the work; it being understood that

he should maintain these and his new portions during the progress of his operations as far as lies in his power. But I declare that as soon as his work is concluded, he must have them distinctly portioned out, under pain of losing them, as before enjoined.

SEC. 11. And finally, that if the adit should pass through mines already occupied and situated in the direction of the vein, half of the metals thence extracted shall belong to the adventurer, and half to the owner of the property; but the costs are to be all defrayed by the adventurer; and he must not exceed in his adit the dimensions before prescribed, nor may he undertake any other works, unless with the consent of the owner, in which case the expenses must be divided between them. But if the adit should pass across the vein, the adventurer may open other works in pursuit of the same, and the metals, as well as the expenses, shall be divided equally between them, until there shall be some communication established with the works of the master of the mines; and if the adventurer does not give notice immediately on discovering the metal, he shall not only lose his right to the half thereof, but shall be obliged to make restitution of all he may have already extracted, and to pay double its value; proof of such fraud and malice having been previously made out, according to the form declared by chapter three.

SEC. 12. All things contained in this present chapter, from the fifth section inclusive, with regard to adventurers, is likewise to be understood, as far as it is capable of being adapted, in cases where mine owners shall be disposed to attempt the clearing of their own mines or those of others, by means of an adit or counter mine in common, whether the work is undertaken by all jointly, or by some without the rest, or in company with adventurers, in all of which cases the stipulations which they have made must be punctually observed, provided they do not interfere with the injunctions and objects of these Ordinances.

SEC. 13. The owners of mines which require draining, but are in a situation which will not admit of the formation of an adit, must work them by means of a general and continued shaft, which in New Spain is called *tiro*, and serves by means of machines and engines to draw off the water, and extract the ore and other materials from the mines; and which must be made in such situation, and of such dimensions, and be secured in such manner as the Mining Professor of the district may determine and direct. And the Territorial Deputations are enjoined to take especial notice concerning this matter in their visits, inflicting and increasing the corresponding penalties, in proportion to the offenses which may be proved to have been committed.

SEC. 15. Inasmuch as experience has shown the general utility of the

above-mentioned works, as well as the omission and inattention by which they are sometimes made of a less depth than the other works, in order to avoid the expense of such undertakings which become much more serious and expensive by the delay ; and if the owners have not sufficient capital they are obliged to clear the lower works by interior drains, carrying up the water to the *tiro*, by means of engines moved by men, with great expense and little effect, and at times with an intolerable waste of human strength, I ordain and command that all owners of mines which require draining, shall be obliged to make the base or foundation of the *tiro* deeper than the lowest works, so that sufficient support may remain for their being worked, and enough room in the *tiro* for the water ; the observance of all which must be watched with particular care in the visits of the Territorial Deputation, the proper penalties being imposed, as enjoined in the preceding section.

SEC. 15. If any owner of mines requiring drains does not choose to keep them up, contenting himself with working in the upper parts of the mine which the inundation does not reach ; and any person shall denounce the said mine or mines, offering to drain and clear the lower works, immediate information thereof shall be given to the owner, in order that if he be either unwilling or unable to drain them effectually, within the period of four months, they may be adjudged to the denouncer, he giving security for the expenses of the drain, according to the taxation of the proper surveyors, and the satisfaction of the Deputies of the District.

SEC. 16. If the owner of any mine, of which the works are lower than those of the mines belonging to his neighbors, whether from its situation or from the circumstance of greater progress having been made in the works thereof, should be put to extraordinary expense, by his neighbors not draining such higher mines, or draining them insufficiently, in such manner that the waters from the higher works shall descend upon the lower, I ordain and command that the owners of the higher mines shall keep up all the draining which they require ; or, on failure thereof, shall pay respectively to the owners of the lower mines, in silver or good money, the value of all the damage they may have sustained, estimated by surveyors, who shall first of all inquire and make all possible experiments to ascertain the real truth and circumstances of the case.

SEC. 17. To all persons who will take upon themselves the expense of draining and cleaning several mines by making shafts in common, or other works, and of constructing and maintaining costly machines—where an adit is not practicable—I grant the ownership of all the desert mines and portions which they shall effectually clear, even though they may be contiguous and upon one of the same veins ; and I command

that the Viceroy, at the representation of the Royal Tribunal General of Mexico, shall dispense to them all the customary privileges, exemptions, and aids ; but I declare that the owners of occupied mines, deriving benefit in any manner from such works, shall be obliged to contribute to the expenses of the same, only in proportion to the advantage their mines may have received, according to the valuation of surveyors, with the approbation of the Deputies of the District.

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## CHAPTER XI.

### MINES WORKED BY COMPANIES.

SECTION 1. Inasmuch as mines are often worked by miners joined in companies, from the time of the denouncement of such mine, or according to contracts entered into subsequently in various ways, to the great advantage and improvement of the operations in mines, since it is much easier to engage therein when many persons concur, each subscribing a part of his capital, and as where the wealth of one alone is not sufficient for great undertakings, that of an united company may be ample ; in such cases I desire and command that such companies, whether public or private, may be encouraged, promoted, and protected by all convenient measures, my Viceroy granting to those who may form themselves into such companies, every favor, aid, and exemption which can be granted them, according to the judgment and discretion of the Royal Tribunal of Miners, and without detriment to the public or my Royal Treasury.

SEC. 2. Although by these Ordinances I prohibit any individual mine owners working within the ordinary limits, from denouncing two adjoining mines on the same vein, yet notwithstanding, to those who work in companies, although they be not the discoverers, and without prejudice to the right which they might derive from becoming discoverers, I grant the right of denouncing four new portions, or four deserted mines, even though they should be contiguous, and on the same vein.

SEC. 3. The accustomed usage in New Spain of dividing a mine into twenty-four imaginary equal parts, commonly called *barras*, subdividing also each of these into suitable smaller parts, shall continue to be observed as heretofore without any alteration.

SEC. 4. By consequence, no one of the partners may claim, or have a right to work the part A, or any determinate part of the mine, or any other to work the part B, or place therein fixed number of workmen ;



but they must work in common, as far as it is possible, and make a division of the expenses, by sharing the amount of the same in equal proportions among all the partners, and there shall be the like division of the produce in metals of all kinds and qualities, whether in a rough state or after they have been wrought, as may have been agreed upon by the parties.

SEC. 5. In order to avoid the disputes and differences which usually occur in mining companies about the direction of the works, applications for supplies, the administration, and other points connected with the operations, I ordain and command that all the measures necessary to be taken shall be determined by plurality of votes, with the intervention of one of the Deputies of the District, who shall always endeavor to preserve harmony among the parties.

SEC. 6. The votes shall be valued and counted according to the shares which each partner shall possess in the mine; so that if one or more shall be owners of one and the same share, they shall have only one vote, and he who holds two shares shall have two votes, and so on for the rest; but if one partner alone possesses twelve or more shares, the owner of such a number of shares shall have a number of votes less by one than half the number of such shares.

SEC. 7. In all cases where any dispute may arise, either from an equality in the number of votes, or from any other cause, the Mining Deputy who shall preside at the Junta or Meeting, shall decide the same as above declared, and I charge the said Deputy to attend always to justice, and the common interest of all the partners.

SEC. 8. If, in the course of operations, a mine should be worked which produces no profit, or which does not repay, either entirely or in part, the expenses which have been bestowed upon it, and any one of the partners does not choose to contribute his share of the expense, in this case, the others shall give notice to the respective Deputation, in order that the day may be noted down on which he ceased to contribute; and if he persists in his conduct during the continuance of four months, I declare thereby he forfeits, reckoning from the day on which he ceased to contribute, all his share in the mine, which shall go to increase the portions of those who have contributed their contributions, without any obligation on their part to denounce the same; but if, before the expiration of the four months, he shall contribute his share of the expenses, he shall still be a partner, provided he pays all arrears that shall have accrued from the time when he ceased to contribute to the satisfaction of the parties concerned.

SEC. 9. If, while any mine is in a course of profitable working, any

partner should refuse to concur in the expenses of the dead works (established according to the forms before prescribed), upon the ground that such dead works would consume a part or the whole of the produce of the mine, the rest of the partners may retain and devote to this purpose a part or the whole of the produce which falls to his share.

SEC. 10. If one or more mines are worked by two partners, and they desire to break up the partnership, on account of disagreement, or other cause, they shall not be reciprocally obliged to sell or buy their shares to or from one another, but each of them has the right of selling his share to a third person, giving his partner, however, the first offer thereof.

SEC. 11. The company is not to be considered as broken up by the death of one of the partners; but the obligation devolves on his heirs, who have, however, the privilege of selling their share, according to the terms prescribed in the preceding section.

SEC. 12. If any share in a mine, or any entire mine, should be sold, after having been appraised and valued by surveyors, according to its condition at the time of the sale, and it should afterwards become of great value, I declare that the sale shall not on that account be rescinded, on allegation of the great loss sustained, nor on demand of being restored to his former situation (*i. e.*, on the part of the seller), nor of any similar privilege.

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## CHAPTER XII.

### LABORERS IN MINES AND IN WORKS FOR THE REDUCTION OF METALS.

SECTION 1. Forasmuch as it is a notorious and well established fact, that the working miners are a very poor class of people, and very useful to the State, and that they ought to be adequately remunerated for the severe toil they undergo, I ordain and command that no mine owner shall presume, on any ground or pretext whatsoever, to alter the rate of wages established by long usage, and adopted in all the mining districts, but that the same shall be observed, as well in regard to persons employed in the works and machinery, as to the laborers in the mines, under the penalty, if at any time any mine owner shall diminish the established wages, of paying the said laborers the double thereof; and the laborers shall be obliged to work according to the said established rate of wages.

SEC. 2. The workmen in the mines must be registered by their own proper names, and must mark with plain and distinguishable strokes each

occasion of their leaving their work ; so that they themselves may know and recognize the same, even when they are not able to read, according to the forms hitherto adopted in New Spain.

SEC. 3. The amount of the wages are to be paid every week to each workman, according to his tallies, and with the greatest punctuality delivered in ready money and into their own hands, in current coin or in silver or gold bullion of good quality, if there be not ready money, or by part of the metal which may have been extracted, if it shall have been so agreed between the parties. And I strictly prohibit their being compelled to receive such payment in merchandise, effects, fruits, or provisions.

SEC. 4. At the time when their wages are paid, they (the workmen) shall not be forced to satisfy the debt and charges for which they may be liable, even though they be such as are usually termed privileged, without a judicial order for so compelling them, except as to those which they may have contracted with the mine owner, with an understanding that the same should be paid out of their labor, and even in these cases, not more than a fourth part of their wages shall be so retained.

SEC. 5. I prohibit the making demands upon the workmen for alms, charity, collections for brotherhoods, or any similar purposes, until they have received their dues, and these being settled, such donations shall be left entirely to their free will and disposition.

SEC. 6. Where the workmen are paid by weekly rations and monthly salaries, the rations supplied must be of good wholesome meat, wheat, maize, Indian corn, pinola (a fruit of the country), salt, red pepper (capsicum), and such other articles as may be usual, according to fixed and exact measures and weight, to all which particular attention must be paid in the visits of the Territorial Deputations.

SEC. 7. Each workman or servant of the mines, referred to in the preceding section, must keep in his possession a paper, in which shall be marked the parts of his monthly salary which shall have become due, as well as every thing which he may have received on account, all written by the accountant or paymaster of the mine and establishment, and the dollars and reals distinguished by circles, lines and half-lines ; so that each workman may adjust and understand his own account, and have a proper statement thereof in his possession.

SEC. 8. The duties or tasks of the workmen shall be assigned by the captain of the *Barras*, who must attend to the hardness or softness of substance, the abundance, scarcity, and other circumstances of the work, proceeding with the greatest justice and equity in moderating the said tasks, in allowing good pay to those employed in such tasks, and in

increasing the same, under any change of circumstances; and in case any party should complain of any particular grievance, the respective Mining Deputation shall proceed to redress all injuries by a verbal decree, or by judicial process, if the parties cannot otherwise be brought to an agreement, all which shall be done in the form prescribed by chapter three of these Ordinances.

SEC. 9. It is also my Royal will that no supplies shall be afforded to the Indians of allotment, in order that immediately on concluding their tasks they may return to their village and habitations, and others be employed in their stead as the law requires. And that the free Indians alone may receive supplies as far as five dollars to each, conformable to an act granted by my Royal Audiency of Mexico; although in cases of any peculiar urgency, such as the celebration of their marriages, or the funerals of their wives or children, I permit that on the same being proved to the satisfaction of the mine owner, administrator, or overseer, by a certificate from the curate (of the parish of an Indian so circumstanced), he may be furnished with what is necessary for such purpose.

SEC. 10. Both the mine owners and the workmen shall be entirely at liberty to agree between themselves whether they shall be paid for their work by the task, by a share of the profit, or by salary and share of the profit. Supposing this mutual liberty understood, when the mine is not worked by share of the profits merely, the owner or administrator shall pay the workmen such wages or salary as shall be conformable to the first section of this chapter; and if, when the arrangement is for task-work, any one of the laborers, called *Barreteros*, having finished his task, shall continue voluntarily for all or part of the time remaining to extract further ores, the mine owner shall not be obliged to pay otherwise than in money, and in proportion to his daily rate of wages, for all such ore as may be extracted. But if in order to promote and stimulate the exertions of the workmen, the mine owner or administrator should agree to pay them at a certain rate for every sack or bag of metal which they may extract beyond their task, or to pay them for the same with a part of such metal, all such contracts shall be fulfilled according to the engagements on both sides, provided the circumstances shall not have materially changed in the opinion of the respective Mining Deputies; and if these should disagree, the respective substitutes shall decide according to the rule already established in such cases; but in all that regards the terms on which laborers are to work in the mines, whenever there shall arise any dispute between them and the master or steward of the mine, which may occasion injury to its working and progress, and

consequently to the State, and either of the parties shall make an appeal, the respective Deputation shall decide the same, and eventually, if necessary, the said substitute, conformably to the practice established in the mine in question, or, if it be a new mine, then in conformity with the practice of the district.

SEC. 11. The ore extracted in the course of the task-work, and that extracted in working for a share of the ore, shall be received and attested by the accountant or inspector, or other person appointed for that purpose by the mine-owner, and if he thinks the ore delivered by any laborer as his share-work better or purer than that of his task, they shall both be mingled together in the presence of the workmen interested, and shall be stirred about as much as he may desire, in order that he may choose from whatever part of the heap so mingled he may prefer, as many sacks, bags, or measures as there were in his share before such mixture was made : it being understood that no mine owner, his steward, overseer, or other servants shall, on any pretense whatever, prevent the laborers interested from being present during all these proceedings, or cause the sacks to be filled from any other part of the heap than that which the said laborers shall choose.

SEC. 12. The inspector may examine all those who go in and out of the mines, observing with the greatest care whether they are in a state of intoxication, or whether they carry with them any intoxicating liquors ; and he may also register all that comes in or out of the mines under the head of breakfasts, dinners, etc. ; and if he should discover any stolen metal, tools, gunpowder, or any thing of the like kind, he shall preventively apprehend, confine, and secure the thief ; and thereby give notice to the Territorial Deputation, in order that due proceedings may be instituted, conformably to the regulations established by chapter three of these Ordinances.

SEC. 13. Idle persons and vagabonds, of whatsoever cast or condition they may be, who shall be met with in the mining districts or the neighboring villages, may be seized and compelled to work in the mines, as well also as the laborers who from mere idleness shall have withdrawn themselves from this employment without engaging in any other ; for which the mine-owners may appoint proper officers, by license of the Courts and the Territorial Deputations of the districts, as usual in such cases ; but it is to be understood that no Spaniard, or Spanish Mestizo, the latter being considered as a Spaniard, can be included in such regulation, as both one and the other are by law exempted ; and when such persons have incurred punishment by their idleness or offenses, other penalties must be inflicted on them by the proper Judge according to the nature of their offenses.

SEC. 14. In the distribution and allotment of the Indians of the villages near the mining districts, commonly called the Indians of the Quatequil or Mita, to the reducing establishments, the rights and pretensions, acquired at different times by the proprietors of such establishments, shall be maintained and observed in those which are in a course of working, and have continued so without interruption; but in the establishments which have been deserted and abandoned, and whose allotment of Indians may have passed to others more recently established, the latter are to be maintained in the possession of the same; and in case the former shall be reëstablished, they shall only be entitled to the quatequil of such villages as shall have before belonged to them, and shall not have since passed to other establishments; and the same is to be observed in respect of the working companies both of mines and of reducing establishments; but in neither case shall such distribution and allotment of Indians exceed the proportion of four out of every hundred, according to the established practice in New Spain; and in order that the Mitas may be regulated as much as possible in favor of the Indians, I ordain and command that in the execution and fulfillment of the law, (Art. 1, Chap. 5, Book 6, and Art. 4, Chap. 15, Book 7,) the negroes and free mulattoes who wander about as vagabonds, and the mestizos of the second class, who are without occupation, may be compelled to work in the mines; and that criminals condemned to hard labor, and not excepted by the preceding section, may be taken to work in the mines, with the consent of the mine proprietors, who are to be in that respect entirely free, either to admit such criminals to work in the mines, according to the greater or less degree of facility which there may be of guarding them during the intervals of their occupation.

SEC. 15. Working companies belonging to deserted establishments shall not be allowed to establish themselves in villages, even though they may construct a chapel and erect a belfry, because by so doing they appropriate to themselves the earth and water intended for the supply of such establishment, thus impeding and wholly preventing its reëstablishment; to avoid which I desire and command them always to bear in mind that such situation may be at any time denounced, and in case of works being reëstablished there, they are again to become part of the working company, and to be dependent upon the proprietor of such establishment.

SEC. 16. The laborers belonging to working companies of mines or establishments shall be obliged to work on the establishment to which they are attached rather than elsewhere, and shall only be allowed to work elsewhere by the consent of the proprietor of such establishment, or in case he shall have no employment for them.

SEC. 17. As it is found by experience that in unproductive mines there is generally a default of workmen, by reason of their all flocking to those mines which are in a course of working, particularly where the proprietors allow them a share of the produce, thereby interrupting and impeding the working of the other mines; for remedy thereof I ordain and command that the Territorial Deputations shall cause such workmen as are in a vagabond state, and not attached to any establishment, to be alternately employed in each of these classes of mines, so that they may enjoy the benefit of being employed in those which are in a course of profitable working, and not deprive the others altogether of their service; with the same view it is my sovereign will that no workman, going from one mine into another, shall be admitted by the proprietor of such other without producing a certificate of good behavior from the master he has left, or his administrator; otherwise such mine proprietor so admitting him, as well as the workman himself, shall be punished in proportion to the evil intention with which they appeared to have acted; the observance of all of which things shall be strictly attended to by the Territorial Deputations, as pertaining to their jurisdiction.

SEC. 18. Workmen who, having contracted debts while working in any mine, shall engage themselves to work in another, may be compelled to return to the former, with a view to the discharge of such debt by their labor therein, according to the fourth section of this chapter, unless the creditor shall consent to accept security for his debt from the proprietor of such other mine.

SEC. 19. In cases of thefts committed by the workmen of the mines on the establishments, whether of metallic ores, tools, gunpowder, or quicksilver, punishment shall be inflicted according to the nature and circumstances of the offense, and the repetition of the same; imposing whatsoever is by law established, and measuring the punishment due to offenses of the Indians by the damage sustained and the malice evinced; the respective judges in the cognizance of such causes regulating themselves by the rules laid down and declared by chapter three of these Ordinances.

SEC. 20. Workmen who, for slight offenses, debts, or other causes, are imprisoned according to custom, and remain there a long time to their own destruction, and to the distress of their families, may be removed from prison and placed to work, provided that in the mine or establishment where they are employed there may be the means of securing them during the intervals of their labor, to the end that, after setting apart a portion of their gains for their own support and that of their families, the rest may be applied to the discharge of their debts, the confirmation

of their marriages, the payment of pecuniary penalties, and the satisfaction of parties whom they may have aggrieved ; and of all this the proprietor or administrator of the mine or establishment must keep a clear and distinct account.

SEC. 21. If any barretero or other workman, or person serving in the mines, shall work improperly, leaving any metal adhering to the surface of the mine, or in any other manner maliciously concealing metal, he shall be punished in the manner prescribed by section nineteen of the present chapter.

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## CHAPTER XIII.

### SUPPLY OF WATER AND PROVISIONS.

SECTION 1. The supply of water for drinking being an object of the greatest importance in mining districts, I ordain and command that its introduction thereto, the preservation of its source, and the good condition and cleanliness of the conduit pipes be particularly attended to, and that no water be used that is impregnated with mineral particles.

SEC. 2. I prohibit most rigorously the emptying of any water from the mine drains, and from the washing places of the works and smelting houses, into the streams or aqueducts by which the population is supplied ; and I command that the said water be carried off by canals or otherwise.

SEC. 3. I desire and command that in the immediate neighborhood of mining districts, there may be a sufficient number of grazing places and watering places for the cattle which work the machinery necessary to the reduction of the metal from the ore, or which are employed in the transportation thereof, or who shall be paid for the same, if their possession be lawful, according to the valuation of a surveyor appointed on each side, and of a third in case of disagreement ; with the express understanding, however, that such sales shall only happen in cases of lands which can lawfully be granted, and to the extent which may be necessary for the above mentioned purpose, and, as to any excess over and above, that shall only take place with the free consent of the owner of such lands.

SEC. 4. All persons are permitted to go with and drive the said cattle through all common and public lands, meadows, or pastures belonging to other mining districts, or through places not possessing any mines, with-



out paying anything on that account, although their masters may not reside in such district; and they shall enjoy the like exemption from such payments on lands belonging to individuals where it is not the custom for other passengers or mule drivers to pay; but where it is the custom for others to pay, then they also shall pay what is usual and just; and I declare that persons going about to search for mines shall be allowed to have one beast to ride on, and one to carry their luggage, without paying anything for their pasture, either on public or private property, and whether it be customary or not to pay for the same; but in order that this privilege may not be abused any excess shall be watched with the greatest care, and if such be committed to the prejudice of a third person, application shall be made to the respective Royal Court for the proper remedy.

SEC. 5. In order to restrain any extraordinary rise in the price of provisions and clothing in the mining districts, when they are in a flourishing state, and that the same may be equitably regulated according to the circumstances which ought to influence it, the Territorial Deputations shall make proper representations thereupon to the Courts of the District, according to what is laid down in section thirty-five of chapter three of these Ordinances; and also for the restraining and punishment of monopolies, extortions, usuries, and all unfair or fraudulent contracts or practices whatsoever.

SEC. 6. All persons shall be at liberty to carry to the mines maize, wheat, barley, and other provisions and necessaries, such as charcoal, wood, tallow, hides, etc., more especially when they have been sent for them by the miners themselves; and for this purpose I grant them permission to bring such provisions from all cities, towns, villages, and establishments whatsoever, even if situated in other districts, provinces, or governments, provided there be just cause for so doing; and, therefore, I command all Governors and Magistrates of the different places not to obstruct them in so doing, nor to allow the price of such articles to be improperly raised, but rather to assist and favor them in order that the mines and persons employed in them may be always sufficiently provided with what is necessary.

SEC. 7. Without prejudice to the jurisdiction and cognizance granted to the Royal Courts by section thirty of chapter three of these Ordinances, the Territorial Deputations are to be allowed frequently to visit and inspect the fountains and sources which supply the waters for putting the machinery of the mines in motion, in order that they may be able to make representations thereupon to the said Courts as occasion may require, and in order that all persons may be prevented from cutting

down any of the woods in the neighborhood which serve to protect them, or clearing them away for tillage, or otherwise reducing them; as also from making any hollows in the neighborhood lower than the waters, or doing any other thing by which they may be drained off, or diminished; but on the contrary, they may be cleansed and purified with all the precautions of scientific practice.

SEC. 8. The said Deputations shall likewise take care that the rivers and streams preserve their ancient course and beds, representing to the Royal Courts in proper time, and before the said evils shall have become irremediable, the impediments which have occurred either from the current leaving islands, or banks which change the direction of the stream, or from the overflowing of the banks, or from other causes, which might be remedied by proper diligence in many cases; and to the end that the provisions of this and the preceding section may be carried into effect, the Deputies and the Surveyor of each mining district shall twice in every year visit the fountains and springs within their boundaries, once just before the rains and once immediately after, carefully examining them, and if they find that they require any cleansing, repairing, alteration, or amendment, in order to preserve their proper channel and direction, they shall make representation thereof to the Royal Courts, who shall, with the intervention of the said Deputies and Surveyor, order the same to be repaired at the expense of the owners of the estates and others interested in such waters; and in case of there being no such interested persons, or their contributions not being sufficient, the said Deputies shall appoint such arbitrators as they shall consider competent and impartial, who are to determine, according to the provisions of section thirty-six of chapter three of these Ordinances, whether or no such repairs shall be undertaken at the public expense.

SEC. 9. To the end that the high roads and private ways necessary for the intercourse of villages in the neighborhood of mines, with the rest of the district on which they depend for supplies, may be kept in as good and secure a condition as possible, considering that generally those in the immediate neighborhood of the mine districts are much broken up, difficult, and dangerous, particularly during the rainy season, I ordain and command that the Territorial Deputations shall promote this important object by all the means in their power, before the respective Royal Courts, by carrying the same into effect either at the expense of the owners of mines or establishments, or by imposing a toll upon passengers and mule drivers, if this be agreeable to the practice of such place, or in any other manner; *provided*, only, that the Court be guided in this respect by the provisions of the said section thirty-six of chapter three.

SEC. 10. For the better preservation and security of private roads between villages and mines, between mines and mines, and also between mines and establishments, the provisions of the preceding section shall be acted upon, even though such works ought in the particular case to have been effected by the owners of the respective mines or establishments; moreover, the Territorial Deputations are enjoined to visit the said roads frequently with the utmost attention and care, inasmuch as the said roads and ways, being in general narrow and broken, are rendered still more dangerous by the constant traffic, carelessness, and negligence of those who frequent them.

SEC. 11. As to rivers, streams, and currents which it is necessary to pass over in order to go to or from the mining districts, there shall be built substantial bridges of stone and lime-work, or at least of timber, on solid foundations of stone and cement, which are more proper for such rivers, as those which run between high grounds at no great distance from each other are generally deep and rapid rather than of great width; for the necessity of their construction, the amount of their expense, and the ascertaining of the parties upon whom such expense is to be levied, proceedings are to be had according to sections thirty-five and thirty-six of chapter three of these Ordinances.

SEC. 12. The mountains and woods in the neighborhood of mines are to be used for the purpose of providing them with timber for their machinery, and with wood and charcoal for the reduction of the ores, and the same is to be understood with regard to those which are private property, provided a fair price be paid to the owners; and I hereby prohibit all persons from exporting or removing their timber, wood, or charcoal from their respective districts to others which might be more properly supplied elsewhere.

SEC. 13. The cutters and carriers of wood shall not cut at any other time, nor deliver in any other manner, than shall be prescribed by the particular regulations which are to be drawn up by the Royal Tribunal General of Miners, by which they are to be regulated; *provided*, that these regulations shall in the first instance be approved by the Viceroy and authorized by my Royal approbation.

SEC. 14. All dealers in wood and charcoal are strictly prohibited from cutting young shoots for firewood or charcoal, and I ordain that plantations of young trees shall be formed where there are none; particularly in those places where there have been such plantations formerly, as from the consumption and failure of reproduction the two species of wood most necessary in the working of mines and reduction of metals have become scarce; and be it understood, in order to attain this important

object the Royal Tribunal of Miners shall draw up particular instructions and directions, which must be observed under certain penalties to be named therein for that purpose, there being the same necessity for the approval of the Viceroy and my approbation as in the preceding section.

SEC. 15. Wells of salt water and veins of salt rock, which are frequently met with in some mining districts, may be denounced, the greatest care being used to authenticate such discoveries, and no impediment being thrown in the way thereof by any Judge or individual; *provided*, however, that notice thereof, and of such denouncement, be given to the Superior Government, in order that they may take account of and determine as to the working and distribution and price of the salt, so that no injury shall accrue to my Royal Revenue, and that the miners, and more particularly the discoverer and denouncer, may derive the utmost benefit therefrom; observing, however, that the Indians are by no means to be deprived of the salt works which are conceded to them by law, nor prevented from the use thereof in the same manner as is now permitted to them.

SEC. 16. The Judge and Deputies of each mine establishment shall take particular care that in the prices of timber, wood, charcoal, hides, tallow, cordage, salt, magistral (sulphate of iron) (chalk), ashes, barley, straw, and other things of indispensable necessity in the working of mines, the sellers thereof shall not act with extortion; for which purpose the said Judge, acting in concert with the Territorial Deputation, shall fix the prices of the said articles, with due regard to justice and equity, so that neither the seller shall lose the regular profit of his trade, to which he is justly entitled, nor fall into the other extreme of demanding exorbitant prices, which would paralyse the labor of miners, who, generally speaking, are not in flourishing circumstances.

SEC. 17. The distribution by retail or parceling out of quicksilver in small quantities shall be provided for in the manner directed by my Royal Orders of the twelfth of November, 1773, and fifth of October, 1774.

SEC. 18. Whoever shall work mines in a different district to that in which he resides, and shall derive considerable advantage from such working, shall be obliged either to build a house in that village which is in the neighborhood of his mine, or to construct some work of public utility to be estimated by the Deputies of Miners, and shall also be liable to all the charges which are or ought to be paid by the miners of the said district.

SEC. 19. No dealer or miner shall, under any pretense whatsoever, intercept on the roads the sellers of fruit, grain, or other commodity,

even though they pretend that they are buying for their own consumption, and not for the purpose of selling such articles again ; but I grant the mine owners liberty to purchase such articles in other villages, and to conduct them, on their own account, to the mines, and I permit the sellers generally to carry them thither without obstruction.

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## CHAPTER XIV.

### MILLERS, PERSONS WHO REDUCE ORES FOR THE MINERS BY AGREEMENT, AND PURCHASERS OF METAL.

SECTION 1. Considering the measures which may best promote the advancement of the mines, as well as the increase and support of the mining population, and observing the customs which have hitherto prevailed in New Spain, by which it is permitted to all persons to buy and sell ores, and also to erect establishments for reducing the same, although they may not themselves be the possessors of mines, I will ordain that both these customs be kept up and encouraged, provided that in so doing the strictest attention is paid to the enactments of the eleven following sections :

SEC. 2. All persons are prohibited from purchasing ores otherwise than in the outer courts of the mines, or in some public place adjoining thereto, within the view and by the permission of the owner, administrator, or accountant of the mine, from whom such purchaser must receive a ticket expressing the day on which the metal is purchased, its weight, quality, and price, and whether it be the property of the master, or of any person working or serving in the mine.

SEC. 3. If any miner shall lay information of any of his metal, which has been stolen, being in the possession of a purchaser, and such purchaser, on examination and comparison of the metal, cannot justify himself by the production of such a ticket as is mentioned in the preceding section, the same shall be considered as having been stolen, without the necessity of farther proof, and shall be restored to the miner ; but if the latter by any other means shall clearly prove it to have been stolen, and there shall have been a repetition of the offense, the offending party shall not only restore the stolen property to the miner, but such penalties shall be inflicted on the offender by the proper Judge as are directed by section twenty-nine of chapter three of these Ordinances, with attention to the nature and all the circumstances of the offense.

SEC. 4. No one shall be allowed to purchase, from persons working or serving in the mines, quicksilver, either fused or in a crude state, metallic grains, gunpowder, ashes, chalk, or lead, under a penalty to the buyer of paying double the amount thereof on conviction, and to the seller of being severely punished, according to the nature of the offense, even though no one should come forward expressly to convict him.

SEC. 5. In order that the owners of establishments for reducing the metals may not exorbitantly raise the price thereof, to the prejudice of the miners, and on the other hand may not fail to realize a fair profit, I ordain and command that the Judges of the respective mining districts shall every year, acting in concert with the Territorial Deputations, establish and fix the proper dues to be taken that year for every quintal of ore, regulating the same according to the price of timber, of iron, and of labor, and of whatever else ought to be considered for the purpose; and shall establish the same by a table of fees, which is to be prepared under the authority of the said Judges, and to be affixed to and exhibited in public places, and to be kept in every establishment where metals are reduced in the manner here mentioned, and its provisions to be strictly complied with.

SEC. 6. The said reducers are on no account to charge the owners of the metals a higher price for quicksilver than is paid for it in the same district by those mine owners who procure it on their own account and for their own consumption.

SEC. 7. In the article of salt, magistral, chalk, powder of lead, charcoal, wood, and other ingredients used in the reduction of metal by quicksilver or by fire, the said reducers shall not be allowed to take more than twelve per cent. profit on the actual price at which they may be bought at first cost by those who purchase them on their own account and for their own consumption.

SEC. 8. The tickets which are usually given to owners of metals, containing an account of the expenses and produce, are not only to express the same generally, but are to particularize the reducing expenses, the price of each ingredient, the price of the labor, the consumption of quicksilver, and the produce of gold, etc., and must be signed by the owner and administrator of the establishment, and by the amalgamator or smelter; and in the event of any of the preceding sections being transgressed, proceedings shall be had by the production of such ticket against the owner or administrator of the establishment, so as to identify the owner of the metal; and if intentional fraud shall be proved against them, they shall pay him three times the value.

SEC. 9. No reducer of metal shall compel the owner of metals to pay

the costs of reduction with the silver or gold so reduced, but only in money ; but if there shall have been an agreement to pay in bullion, the same is to be taken at its full value, without any premium or reduction ; and the same thing is to be observed with respect to the amalgam (silver and mercury combined), which it may be sometimes necessary to leave at the establishment as a pledge during the continuance of such agreement.

SEC. 10. In order to prevent the frauds and impositions which frequently arise from the uncertainty of the reduction by quicksilver and by fire, sometimes to the injury of the owners of the metal by taking away part of the silver or gold produced ; sometimes to the injury of the reducers, when the metal is not sufficient to pay the costs of its reduction, I ordain and command, that until the establishment of a Public Office in the mining districts, which ought to be done as soon as possible, for the reduction by way of assay of one or more quintals of metal, for the purpose of ascertaining its intrinsic richness, either the owner of the metal, or of the reducing establishment, when he shall entertain any doubts concerning the results of the reduction, may choose out and have deposited one or more quintals of the metal, to be reduced afterwards for his satisfaction by surveyors appointed in the usual manner, one on each side, and a third in case of their disagreement.

SEC. 11. With the same view that directed the preceding section, no owner of metal who sends it to be reduced by such an establishment, belonging to another person, shall be prevented from attending, either personally or by a confidential agent, all the operations of the reduction, from making trials, from assaying any part of the mass in various ways, and doing everything else that he may think conducive towards the better reduction of the metal, or the satisfying himself of the manner in which it is done.

SEC. 12. The amount of carriage to be paid to the mule drivers upon metals taken from the mines to the establishments, whenever any excessive charge is made, shall be settled by the Judge of the district, acting in concert with the Territorial Deputations, having a due regard to justice and equity, and making a difference between the dry and rainy seasons.

SEC. 13. And if any of the said mule drivers shall be proved to have stolen or sold any of the metal on the roads, replacing the same by other materials, they shall be proceeded against accordingly, by the proper judges, and section twenty-nine of chapter three of these Ordinances shall be observed in the infliction of penalties on such persons ; and also, in case of the offense being repeated, always with due regard to the nature and character of the offense, deciding the same according to law,

and in the form prescribed in said chapter three; and be it understood, that if any of the cases comprised in section thirteen of this chapter, the imposition of penalties, or the loss of property, beasts of burden, or other thing whatever, come under consideration, proceedings shall be had according to section thirty-two of chapter three.

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## CHAPTER XV.

### CONTRACTORS FOR SUPPLYING MINES WITH MONEY AND OTHER ARTICLES.

SECTION 1. It often happens that mine owners carry on the works in their mines with the capital of other persons, either because they have not at first sufficient funds of their own, or from having exhausted their own funds in various operations before the extraction of sufficient metal to make them a return, and in such cases they are in the habit of agreeing with contractors for supplies in one of two methods: either by letting them have the gold or silver which they may extract at a price somewhat below the real value, leaving said contractors the benefit of the difference, which method is called *allowing a premium upon the metals*, or by giving the contractor a share in the mine, making him a perpetual proprietor thereof, or of the metals for a certain time by a *species* of partnership; and whereas the necessities of the miners, and the facility of some of the contractors, often lead to contracts which, being unjust, or usurious, or ill understood from the beginning, or appealed against by one or the other of the parties, give rise to litigation, which suspends the supplies, and occasions injury to the mines, and a loss of the capital laid out upon them; it is my sovereign will and pleasure that no mine owner shall conclude any agreement for supplies without a regular signed contract, leaving it at his option to complete the same, or not, before a notary or witnesses; and no agreement that may have been entered into without such signed contract shall be capable of being enforced, but such cases to be determined according to the general rules.

SEC. 3. In all agreements of the first mentioned kind, attention and consideration must be given to the number of marks (eight ounces to a mark) in each delivery, and how often such deliveries take place, so that if, through any accidental circumstances in the mine, the number of deliveries should increase or diminish considerably, either of the contracting parties may be allowed to increase or diminish the premium upon the



metals, without violating the original contracts in other respects ; for which purpose in the instrument as originally drawn up, the number of annual deliveries shall be specified, and the number of marks in each delivery, or the parties, if they please, may renounce altogether any right to avail themselves of such accidents as above-mentioned, in which cases the original contracts shall remain in force for all purposes.

SEC. 3. If the mine owner shall secure to the mine contractor a certain sum for the supplies, either by deposit or security, to the satisfaction of the contractor, the latter shall not receive in the way of premium more than would amount to five per cent. per annum on the capital advanced.

SEC. 4. The contractors shall furnish the supplies in ready money, or in bills payable without discount or loss ; or, if the mine owners should prefer having goods and effects, such shall be delivered to him of a good quality and in a good condition, and at the price at which they could be bought for ready money, at the place where the contractor resides, and in no other manner whatsoever.

SEC. 5. Risks and accidents happening upon the road in the transport of supplies, and the freight and (*excise*) duties payable upon the supplies shall be at the expense of the mine owner, where the contract is by premium upon the metals ; but where the contract is in the way of partnership, such costs shall be at the expense of both, unless any other mode be particularly expressed in the deed of agreement.

SEC. 6. In case of the capital supplied being entirely expended, or of a part of it not being covered by the remaining effects, the mine owner shall not be responsible for the same, in his person, nor in any other property which he may possess, excepting only that connected with the mines and the reducing establishments, supposing this latter to be erected out of the capital advanced ; but the mine, and the effects, and profits thereof, after deducting the expenses, shall go to the payment of the contractors, one after another, beginning with the last or most recent ; be it understood, however, that this being a privilege granted by the law only to creditors who advanced second supplies for the restoring and refitting of mines, it is necessary that the three qualifications should all concur, in order to its being enjoyed ; but if the mine owner, from actual necessity, shall abandon the mine, without any fraudulent intention, and having given notice thereof to the creditors, it shall not remain liable for former claims, when it is in the hands of the new possessor ; and it is further declared, that if the capital supplied to such mines, and in regard to which such deficiency occurs, has not been furnished in the way of partnership, between the contractor and mine owner, in which case the

profit or loss is to be in common between them ; but in the way of loan, and the mine owner shall have made his property answerable, either by choice or because the contractor required it for greater security ; under such circumstances the said obligation shall remain complete in all its parts, notwithstanding the general provisions of this section.

SEC. 7. If no agreement shall have been made at first, as to the mode of securing the advances contracted for, when they are supplied in the way of premium upon the metal, the contractor shall not acquire the same in any manner prejudicial to the mine owner in the working of his mine by cutting off the supplies ; nor shall he be obliged to receive back from the mine owner, in small sums, the supplies he may have advanced.

SEC. 8. Although the mine owner may not have observed at any time that his silver contains a mixture of gold, the separation of which from the silver would be expensive, or that there be silver amongst the gold of a baser quality, and the contractor should have discovered the same, either by assaying or other method ; be it understood that the profit thereof shall not go to the said contractor, but shall be placed to the credit of the mine owner, or proprietor of the metal, in the account kept between him and such contractor.

SEC. 9. When the contract of supply is made in the way of partnership in the property of the mine, be it understood that the capital invested, until the time when there shall be a surplus profit, over and above the expenses, is not to be immediately deducted from the profits, with preference to the contractor, but the profits are to be divided, the capital remaining so invested during the continuance of the partnership.

SEC. 10. The Merchants or Dealers in silver, who receive it without having advanced anything to the owners, or encountered any risk, shall pay for it at the full value ; and if they give in exchange for it any goods, the latter shall be charged at the regular price, and shall be of good quality ; and I strictly ordain and command, that the said merchants or dealers in silver shall receive it from the mine owners, being assayed, and the fifth part deducted therefrom (as Royal Duty), conformably to law, and as repeatedly enacted by Royal Decrees, in order to prevent its being illegally disposed of in any of the different ways in which my Royal rights are infringed. And I further declare, that in those districts where such assaying and deducting of the fifth part cannot be conveniently managed, on account of their distance from the Royal Treasuries, or marking offices, the merchants or dealers shall bind themselves before the Royal Court and Territorial Deputation to take the metal forthwith to the office of the district, in order to fulfill the said obligation of paying any Royal dues, and to verify the performance of

the like, as regards quicksilver, according to the established custom in New Spain; the said Court and Deputation allowing them a certain time for carrying all this into effect, and giving notice of the said obligation to the Royal officers whom it may concern, so that if the said persons should fail to fulfill the same, such silver shall be deemed to be confiscated, and the said officers shall take steps to obtain possession of it, and to inflict the other penalties imposed by the laws upon the defrauders of my Royal rights.

SEC. 11. All the Merchants of the Mining Districts shall keep a correct and light balance and scales, in which only all the silver and gold shall be weighed; and they shall never use for this purpose steelyards, however large the masses or quantities of the metal may be; and they must also keep weights marked and properly adjusted according to those which they have received from the proper Royal authorities; and I permit the respective deputies to inspect the same from time to time (without prejudice to the regular inspection by the Royal Court and Public Magistrate), and to take care that the weighing be always justly and correctly performed, to the end that in case any fraud should be discovered, and also in case of the repetition of such fraud, proceedings may be had before the competent Royal Court for the imposition of penalties proportioned to the nature and character of the offense, the said Court hearing and receiving information on the subject from the deputies of the district.

SEC. 12. All the working Miners must keep their tools and utensils marked, and if any one shall purchase them from any workman, or receive them in pledge, he shall pay for them double the value.

SEC. 13. The aforesaid Merchants and Contractors may, for their satisfaction and that of the owner, heat the blocks or ingots of silver (mixed with quicksilver) over a charcoal fire, but not over a flame, or in any manner by which it might be reduced to a state of fusion, except in crucibles; and they may also be allowed to separate them so as to examine them within, but this must be done as well as trying its quality by heating it upon a counter, or in such manner that the owner may be able to collect and carry away all the waste and refuse fragments of his silver.

SEC. 14. Every contractor has the right of appointing at any time an Inspector to any mine owner whom he contracted to supply, although it be not so expressed in the contract; but be it understood, that such interventor is only to attend to the correctness of the accounts, and to have power over the money and effects, but not to interfere with or obstruct the working of the mine, which belongs entirely to the mine owner; he may, however, defer the carrying on of the operations, by

presenting an account to the Deputies, requesting the appointment of Surveyors, but this only in cases which will admit of such delay.

SEC. 15. Whereas the operations of mines in a course of working, particularly where they relate to the draining thereof, cannot be impeded without great injury, I command that if the contractor for furnishing supplies from time to time, shall neglect to provide them in such manner that at the proper time of paying the wages there shall not be sufficient to pay them, and the mine owner foreseeing this event, shall have called upon the contractor accordingly, and given notice thereof to the Deputation, then, not only the wages shall be paid with the best furnished part of the mine, and even with the very implements and utensils, but the mine owner shall be entitled to demand immediate execution against the contractor for what is due to him, and to apply for money to any other person, or treat with a new contractor, whose claim shall be preferred to that of the preceding one, whenever the mine begins to yield a profit.

SEC. 16. Those who, under pretense of obtaining supplies of mining operations, shall in any way misapply the capital and effects furnished to them for that purpose, shall not only be bound in their persons, and all their property, for the repayment of the same, and for all damage done, or interest due to the party, without being allowed the privilege of miners, or any other whatever, but shall be punished in manner suitable to the nature, heinousness, and circumstances of the offense; more particularly so, if they shall have received the advances in confidence or trust—all this being regulated by the dispositions of section twenty-nine of chapter three.

SEC. 17. The searchers—workers who are paid by receiving part of the metal—and laborers in general, and other persons who shall offer stones and specimens, falsely pretending that the same are the produce of a mine, thereby soliciting supplies for such proposed mine, with intent to defraud and deceive the unwary, shall be punished with all the rigor of the law, according to the circumstances, heinousness, and maliciousness of the offense, to be proved before the proper Court, according to the provisions of section twenty-nine of chapter three of these Ordinances.

## CHAPTER XVI.

## FUND AND BANK OF SUPPLIES.

SECTION 1. Where as by my Royal Decree of the 1st of July, 1776, I was pleased to relieve the body of miners of New Spain from the double duty of one real in each mark of silver, formerly paid to my Royal Treasury, under the name of seigniorage, granting them at the same time, the right of imposing upon their silver the half or two-thirds part of the said contribution, for the purpose of aiding and promoting the new and respectable establishment, to which these Ordinances have reference; and considering at the same time, that the destination of the same, most conformable to my beneficent intentions in this respect, would be the formation of a fund for advancing supplies to the mines; the present insecure and fluctuating state of the mines in general, being for the most part, occasioned by the want of capital, with the aid of which, there is no doubt, they would be put in a more secure and flourishing condition, to the great advantage of my Royal Treasury and of the public. For these purposes, and keeping in view the propositions laid before me by the Royal Tribunal, of the important body of the said miners, I have thought proper to decree and command, that all silver entered in my Royal Mint in Mexico, or in any other that may be established in the kingdom of New Spain, and all silver that shall be remitted to those in Spain on account of individuals (and which must at all times have been at first assayed and the fifth part deducted), shall henceforward pay two-thirds of a real (*probably, per mark*) towards the formation, preservation, and increase of a fund for the mines, and that no mine owner whatever, shall be exempted from such contribution, not even those to whom, for any just cause I may have granted, or may in future grant, a remission or diminution of the duties on metal, which appertain to my Royal Treasury.

SEC. 2. The management, collection, and custody of the moneys to be raised in this manner, shall be always at the disposal, and under the control of the said important body of miners to whom they belong, by means of their Royal Tribunal General in Mexico, which represents them. After deducting from these moneys whatever may be necessary for the support of the said Royal Tribunal, and of the college, and for the instruction of young persons intended for the mining business, of which mention will be made hereafter, and all extraordinary and particular expenses, which may be incurred for the common interest and advantage of said body of miners, all the rest, and the successive

augmentations thereof, shall be entirely devoted to furnishing supplies for the working of the mines throughout the kingdoms and provinces of New Spain, a bank being established for that purpose, according to the regulations laid down in the following sections:

SEC. 3. For the management and business of the said bank, there shall be one principal Factor, or more if necessary—a person of intelligence and experience in the method of supplying mines by contract, who shall be subject to and dependent upon the Royal Tribunal General of the Miners, and be appointed by them in the election, by a majority of votes, they also having the power to remove him at pleasure, and without being obliged to assign any reason for such removal.

SEC. 4. Such Factor either may be paid by a per centage on the property of the bank, or by a fixed salary, or in both these ways, as may be deemed expedient by the Royal Tribunal, according to circumstances, but he must give bail and such securities for his conduct as shall be satisfactory in the opinion of the chiefs of that tribunal.

SEC. 5. The gross amount of the capital of the bank, which shall be in money, or in gold and silver bullion, shall be preserved in chests, of which there shall be four keys, which shall be in the possession and keeping of four of the principal persons belonging at the time to the Royal Tribunal; but the goods and merchandise for the supplies of the mines, and such part of the capital as shall be necessary for the current business and operations, shall be in the possession and at the disposal of the said Factor, he and the said persons above mentioned, being respectively responsible for what may be intrusted to his and their care.

SEC. 6. The Royal Tribunal General of Miners shall cause to be made out in the factory every year, in the month of December, an account of the contents of the warehouses and stores, and a cash account and balance, two of the said principal persons of the Tribunal assisting at such operations; and, moreover, they shall take the accounts of the Factor, without prejudice to their right of inspecting the said accounts at other times, whenever they shall think it proper and prudent to do so.

SEC. 7. The Royal Tribunal shall keep an account and correspondence with the mine owners who have their supplies by contract from the bank, and shall receive and reply to their letters, and give the necessary orders to the Factor for these purposes.

SEC. 8. For carrying on the business of the factory there shall be such writing clerks engaged as the Factor shall think proper, he having the power of proposing them; but they are to be appointed and their salaries are to be fixed by the Royal Tribunal, and they are to be paid by the bank, and the Factor is to have the power of diminishing them, on giving verbal notice thereof to the Royal Tribunal.

SEC. 9. The Factor shall receive all silver which is remitted by mine owners contracting for their supplies with the bank, and shall exchange it for coined money at the Mint in Mexico, paying, in the first instance, into the principal Treasury all duties on the metals which may not have been paid in the Provincial Treasuries, with this understanding, however, that before it is remitted to Mexico the said mine owners shall make declaration at the Treasuries, or marking offices, in their respective districts, of the quantity of silver intended to be remitted without paying the duties on metals, and shall take out the proper permits for its removal, under an obligation to make a return afterwards to the said Treasuries, showing that the said duties have been paid, so that all frauds may be avoided, and the necessary quicksilver properly purified, under the penalty of confiscation of all that shall be sent in any other manner, and of incurring the punishments imposed by law upon defrauders of my Royal Rights; and the officers in the districts shall give notice to those in Mexico, in order that the latter may take care that the provisions of this present section be complied with.

SEC. 10. The said Factor shall pay the interest on the capital received at the bank, the salaries of persons employed, and all other sums whatsoever, upon warrants from the Royal Tribunal, by means of which and the corresponding receipts, he shall make out and justify his account; but for the purpose of remitting supplies, whether in money or in effects, to persons with whom an account current is kept, no particular warrants shall be necessary, but it shall be sufficient for him to act under the general orders of the said tribunal given conformable to section eight of this present chapter, as to whatsoever shall be at his disposal, according to section six of the same.

SEC. 11. It shall be the duty of the Factor to buy goods and merchandise necessary for the supplies of the mines, according to the best of his judgment, and agreeable to the orders of the Royal Tribunal, entering them in a separate book, and preserving the invoices.

SEC. 12. All goods delivered on account of the bank in the way of supplies to mine owners must be of the best quality; and, when in Mexico, at the current prices of Mexico; and when in mining districts, at the current prices of those districts, if the bank shall have a warehouse or magazine in the same, or the goods be carried thither on account of the bank.

SEC. 13. To qualify all proposals or demands relating to the supply of mines, the Royal Tribunal shall require the owners to produce their titles of property and possession, and such certificates, informations and further proofs as may be necessary to establish whatever they may have

asserted concerning the actual state and condition of the mine, in order that, after the papers have been properly examined by the assessor, the required credit may be given if the proposals appear to be fair and well-founded; in which cases the Royal Tribunal is to make all necessary inquiries, both officially and secretly with the greatest prudence and circumspection, taking, or causing to be taken, such measures, judicial or extra-judicial, as shall appear to them necessary for regulating their conduct with regard to such supplies; and all these documents are to be kept in their archives.

SEC. 14. During the time that the funds of the bank shall be sufficient to furnish all the mines for which there shall appear to be a fair and well-grounded claim to be supplied, the claims of those mine owners shall be first attended to who are most in want thereof, without any distinction of persons, and without any preference being shown, except on the score of the necessity and urgency of the case, the Royal Tribunal in such cases acting with that justice and impartiality which ought to be observed in all their transactions.

SEC. 15. When the claim is thus ascertained to be proper and admissible, the terms and conditions under which the supplies are to be furnished shall be settled with the mine owner, and before the contract is concluded, it shall be laid before the Royal Tribunal, conformably to the provisions of chapter fifteen of these ordinances; the great bank of supplies not enjoying any privileges to the prejudice of other banks, or of individuals who supply mines; and afterwards the contract, thus approved of, shall be executed in writing before the clerk of the Tribunal, and orders shall be given for furnishing the supplies accordingly.

SEC. 16. In mines which are thus supplied by the bank, Interventors shall be appointed, who shall be trustworthy persons of good character; and they shall, jointly with the mine owner receive and keep the moneys and goods supplied by the bank in cellars and chests, whereof there shall be two keys; they shall apply them in a manner they think best, and they shall be present at the payment of the wages; shall sign the accounts; shall watch and inspect the workmen as they go into and out of the mines, and also the metals that are taken thereout, and shall be present at the reduction of the metal from the ore; and in short shall concern themselves in all that is done in the name of the bank, agreeable to the instructions given them, until the time when the supplies shall have been repaid.

SEC. 17. The Interventors shall not oppose any arrangements that are made by the mine owner or administrator in regard to the economy and management of labor, or any works which may have been determined on



in the mine ; *provided*, however, that in cases where considerable expense must be incurred, the Royal Tribunal shall first of all be consulted.

SEC. 18. The Interventors shall not interfere in the appointment of persons employed in a subaltern situation in the mines, but they may observe the conduct of such persons, in order to represent to the mine owner anything which they may think requires amendment ; and if the same be not amended, they shall inform the Royal Tribunal thereof, in order that this latter body may make provisions for its amendment, and may do all in its power to keep the Interventor and the mine owner upon good terms, acting in concert together, and uniting their services towards the advancement of the operations.

SEC. 19. The Interventors shall be paid weekly the salaries that are allowed them, on account of supplies ; and when these shall have been repaid, their services shall be rewarded in proportion to the benefit which the bankers receive from them, and to the time and labor which they devoted to the cause, and their good conduct ; but if, on the contrary, any fraud, concealment, or other improper practice shall appear on their part, whether to the prejudice of the bank, or to the mine owner, they shall be severely punished in proportion to their offenses, by the proper Judge, according to the provisions of chapter three of these Ordinances.

SEC. 20. In case of any competition arising between any individual and the said bank as to the supplying of a mine, I declare that the individual contractor shall have the preference ; *provided*, that the proposed terms of supplying the mine are the same in both cases ; and in order that the said bank may not throw any impediments in the way of a free supply of the mines, I declare also that this kind of business shall continue to subsist as before, the bank having no other object but to remedy the scarcity of supplies, and to promote as much as possible the flourishing condition of the mines.

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## CHAPTER XVII.

### SURVEYORS FOR THE OPERATIONS OF MINES AND REDUCTION OF METALS.

SECTION 1. In order that the mines may be worked with stability and good effect, and that the full attainment of riches they contain may be accomplished, it is desirable that their operations should be directed by persons well acquainted with the principles and rules of the natural and practical sciences and arts connected therewith, and who understand

the means of applying such knowledge, in consequence of their own experience; for which purpose, and in order that mine owners may not be misled in the appointment of persons whom they shall take into their employment, accounting perhaps, some persons to be well informed who may only possess a superficial knowledge, or choosing others, who may be no otherwise qualified, than by having resided a certain time in the mining districts, without possessing either judgment or science, and without any claim but the recommendation of their friends; and observing how much difficulty there is in correcting such errors, be they voluntary or involuntary, all which leads the mine owner into placing a blind and dangerous confidence upon important points in persons unworthy of such confidence, and has occasioned them very serious losses, in order to guard against these evils, and that the Surveyors may be worthy of public confidence in all things connected with their art, I ordain and command that in every mining district there shall be one or more intelligent persons, who are well instructed and particularly acquainted with geography, subterraneous architectures, and hydraulics, and also with mechanics, and the arts of carpenters, smiths, and masons, as far as such arts are necessary in the operations of mines, which persons are to be called Mining Professors. And also other persons, well skilled in the science of minerals, commonly called mineralogy, and in the modes of extracting metals from ore and reducing them to a state fit for use, commonly called metallurgy, which persons are to be called Surveyors of Reduction; and these latter, as well as the former, are to be examined, approved, and appointed by the Royal Tribunal General of Miners, and without such qualification they shall not be entitled to any credit in causes which may arise, or otherwise, but shall be considered as intruders, and shall be excluded and fined whenever they shall interfere with anything which relates to the Surveyorship of Mines, although they may offer themselves as Bachelors of Arts, Land Surveyors, Architects, or Masters of Works, or as having been Administrators of Mines, or as having been in any way employed in the same.

SEC. 2. The said Mining Professors shall have in their possession the necessary and proper instruments for measuring mines, whether subterraneously or on the surface, which instruments must always be true and correct, and made according to rule, so that there may be no failure or irregularity in the performance of such operations; for which purpose they shall be inspected and examined at the time when the said persons are appointed, and afterwards on the occasional visits of the Deputies.

SEC. 3. The Surveyors of Reduction shall have a suitable public laboratory, provided with furnaces and machines for grinding and washing

the metals, as also with the proper ingredients, utensils, and correct balances and weights, and everything that may be necessary for making assays on a small scale, and also for reducing by smelting one, two, or three quintals of ore.

SEC. 4. The Mining Professors are to examine at the proper time and to give certificates of examination to all persons desirous of being employed as miners, or mining captains, to direct the underground operations, and to persons employed in the lining of mines, and in the brick work, and to the carpenters and smiths. And I prohibit all persons from exercising such offices, or from employing themselves in the quality of masters in any place where such business shall be going on without having the above certificates of examination, under the penalty of three months' imprisonment for the first offense, and of being banished from such place for the second, which punishments are to be imposed by the respective Territorial Deputies.

SEC. 5. The Surveyors of Reduction of each mining district shall examine and give a certificate of approbation to all persons offering themselves as amalgamators, smelters, and refiners, without which certificate no one shall be capable of being employed in any of these capacities at any work, or Reducing Establishment, under the penalties contained in the preceding section; and I ordain, that all these examinations, and all others treated of in the present chapter, shall take place without any fees being received thereupon, and altogether gratis.

SEC. 6. If any person shall pass from one mining district to another, after having been examined and approved of by the proper authorities in that which he has left, there shall be no necessity for a further examination; but he shall produce his certificate, signed by the proper Professor, and attested by the Clerk, or in default thereof, by the Deputies of the district and two witnesses.

SEC. 7. The said Mining Professors and Surveyors of Reduction shall, at the time of their appointment, take a solemn oath before the Royal Tribunal, in due form, but gratis, that they will at all times and in all cases discharge their offices well and faithfully, to the best of their knowledge, without fraud, deceit, or any bad intention whatsoever; after which they shall not be required upon every occasion which may arise, judicially or extra-judicially, to repeat the same, since when the oath has been once administered, as above, they are ever afterwards to remain bound by it.

SEC. 8. The most perfect credit is to be given to the said Mining Professors and Surveyors of Reduction in all matters connected with their office, but they may be objected to in case they have been appointed by

the Judges ; and when one has been appointed by one party in a suit, the other party may appoint another, and the Judge elect a third in case of their disagreeing, although they need not belong to the same district. But these objections and appointments of new Professors shall not take place where there is reason to suspect that they originate in fraud or malice, or a wish to delay the determination of the case.

SEC. 9. The Mining Professors and Surveyors of Reduction shall be present at all the visits of the Deputies to the mines and establishments, and shall observe and comply with everything that is laid down in these Ordinances, and shall give their assistance in all cases properly belonging to their business, in which it may be required by the Judges and Deputies ; taking on account thereof, such fees as shall be settled by a proper table of fees, which fees shall be proposed by the Territorial Deputation to the Royal Tribunal General, and when that body shall have gained information upon the subject, and consulted with the Viceroy, thereupon the said Viceroy shall by means of such information resolve and determine what fees are to be received, and without this previous authority the taking of fees shall not be carried into effect.

SEC. 10. In the interval that must elapse before the College for the education and instruction of young persons intended for the business of metallurgy, mineralogy, and other sciences necessary in the operations of mining (the establishment of which College will be treated of in the next chapter), shall supply a number of persons, properly qualified according to the provisions of the preceding section, to fulfill the objects of these Ordinances, I command that all persons at present employed in the operations of measuring mines, projecting shafts and pits, and other important works connected with the operations of mines, whether appointed from having the name of land surveyors and measurers of mines, or from having been highly esteemed in the mining districts for their practical knowledge, shall present themselves before the Royal Tribunal General, in order to be examined and to obtain the certificate of examination, without any fees being required (as is provided by section five of this chapter), and to exhibit the instruments which they use in order that they may be examined and approved of, and in default thereof they shall not be entitled to any credit, either in causes which may arise or otherwise ; and if in any works directed by them any mischief shall happen, the mine owner or Administrator who has employed them shall not be excused from the responsibilities and penalties imposed by these Ordinances, and by the laws in general, upon all persons acting without authority of surveyors in cases where surveyors are required.

SEC. 11. All persons to be appointed Mining Professors, or Surveyors

of Reduction, must be either Spaniards, Mestizos derived from them, or noble Indians of known birth, parentage, and education, and of good life and manners, under which circumstances these employments are always to be accounted honorable and meritorious, and persons who have served in them with fidelity shall enjoy all the privileges of miners, and shall be eligible to higher occupations, either in the mines or otherwise, having their seat in the public sittings next to the Judge and Deputies of the District in the order of the seigniority of their appointments, and without any distinction being made between the Mining Professors and Surveyors of Reduction, who are to be treated with like and equal honors and distinction.

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## CHAPTER XVIII.

### EDUCATION AND INSTRUCTION OF YOUNG PERSONS INTENDED FOR THE MINING BUSINESS.

SECTION 1. To the end that there may never be wanting a supply of persons of good education, and instructed in all the learning necessary for carrying on the operations of the mines, and that what has been hitherto acquired by long and painful experience in the course of many centuries, being the result as well of the progress of the different mining countries as of the individual skill and industry of the American miners, may be preserved in a more certain and effectual manner than by mere tradition, which is usually scarce and fallacious, I will and ordain that the College and Schools of Miners which have been proposed to me for these purposes by the Deputies General of the said important body of miners shall be erected and established, or if already established, that they shall be maintained and supported in the form and manner contained in the following sections :

SEC. 2. There shall be for the present maintained, and provided with board and clothing in a suitable manner, twenty-five children, either Spaniards or noble Indians of legitimate birth, the near relations or descendants of miners, having always a preference in such appointments, and particularly those whose ancestors have resided in the mining districts.

SEC. 3. I grant besides free entrance into the schools, and gratuitous instruction therein, to all children whose fathers or tutors may wish to bring them up to the mining business, such children being sent every day from their homes to attend their lessons ; and I further command that

all children of the above mentioned quality and birth shall be admitted to live in the College as pupils upon paying the expenses of their maintenance while they are in the College.

SEC. 4. The necessary secular professors are to be appointed at the said College, with proper salaries, for the purpose of teaching the mathematics and experimental physics, which are conducive to the carrying on and advancement of mining operations.

SEC. 5. There shall also be appointed masters in such parts of mechanics as are necessary for the preparing and working of timbers, metals, stones, and other materials used in the construction of buildings, machines, and instruments for carrying on the operations of the mines and the reduction of the metals, and there shall also be a master of the arts of drawing and designing.

SEC. 6. The said College is to bear the title of "The Royal Seminary of Miners," and two secular Priests of mature age are to reside in it, one as Chaplain-Rector and the other as Vice-Rector, who are to superintend the religious and political education of the children, to see that they devote a due proportion of their time to these purposes, and to say Mass to them every day in the year.

SEC. 7. The immediate control and direction of the said Royal Seminary shall be intrusted to the Director General of the Miners, to whom I grant the privilege of proposing to the Royal Tribunal the proper persons to be appointed to the professorships, and to other employments; and also the nomination of the children who are to be admitted as collegians or pensioners, supposing them to possess the necessary qualifications; and he shall also, after hearing the opinions of the respective masters of the College, propose the arts and sciences proper to be taught therein, and the method to be pursued in teaching them, so that the Royal Tribunal may be able to determine upon what is most proper; and it shall also be intrusted to the said Director to observe and take care that all persons employed in the College fulfill the duties of their situation, and to form particular rules for government in the details of the said College, which he shall also lay before the Royal Tribunal, by them to be submitted to the Viceroy who, after obtaining the necessary information on the subject, shall lay them before me for my Royal approbation, having obtained which the said regulations shall be observed and carried into effect with exactness and punctuality.

SEC. 8. The expenses of erecting, preserving, and supporting the said Royal Seminary shall be defrayed out of the general fund of Miners, according to the provisions of section three of chapter sixteen of these Ordinances.

SEC. 9. The said Seminary shall be under my Royal protection, and immediately subject to and dependent upon the Royal Tribunal General of Miners in all its concerns and appurtenances.

SEC. 10. For the election and appointment of master professors of the sciences which are to be taught in the schools of the College, there shall be issued, at a certain fixed time and place, letters of convocation, and to those who present themselves for the appointments certain problems in the respective sciences shall be delivered by lot, which they are to return with their solutions within three days, on condition, however, that before the delivery of problems to such persons the Director shall have presented to the Royal Tribunal the solutions of each of them separately folded and sealed up, which are not to be opened till each candidate shall have delivered in his solution, when a due comparison shall be made between the sealed solutions and the solutions of the candidates respectively, and on the day when all this takes place the candidate shall hold a public sitting of two hours, lecturing upon such points as the Director shall propose to him at the moment, in the presence of the Royal Tribunal and its Secretary, who shall attest all that has been done upon this occasion and enter it in his register.

SEC. 11. After the conclusion of said public act, the Director shall propose three of the candidates for each professorship, one of whom shall be elected by the Royal Tribunal by secret ballot, and in case of a difficulty arising by there being an equal number of votes (for any two or three of them), he who was first proposed shall have the election.

SEC. 12. The said Master Professors of the College, besides lecturing every day theoretically and practically, shall be each of them obliged to deliver, once in every six months, a treatise or dissertation upon some useful subject connected with the mining business and the sciences relating thereto, which dissertations shall be read to the Royal Tribunal, and preserved in their archives in order to be printed and published at a convenient opportunity.

SEC. 13. The Collegians and Students of the Seminary shall every year hold public exercises in the presence of the Royal Tribunal, in order that, having shown the progress they have respectively made, they may be rewarded and distinguished according to their merit.

SEC. 14. The above-mentioned young persons, when they have concluded their studies, shall go for three years to assist in the mining districts, and to practice the several operations under the Mining Professor, or the Surveyors of Reduction of that district to which they are attached, in order that, having received a certificate signed by such Professors or Surveyors, and by the Territorial Deputies, they may be examined before

the Royal Tribunal, as well in theoretical as in practical knowledge, and on being approved of by the same, shall receive their diploma without paying any fees whatever ; and they may be then appointed Mining Professors, or Surveyors of Reduction of the mining districts, or Interventor, where the supplies are furnished by the bank, or to any other suitable situation.

SEC. 15. In order more effectually to advance the cause of instruction and improvement in the several important objects of the said College, and in the manner most useful to the mines, I ordain and command that the mine owners and mine suppliers who bring their silver to Mexico, shall be obliged to deliver to the said College specimens of their ores, in sufficient quantities to admit of their quality and properties being examined, and of the most advantageous method of reduction thereof being ascertained, in order that, the Royal Tribunal, judging by the result of these experiments, may determine what will be most conducive to the improvements which are the object of the present arrangements.

SEC. 16. Considering that industry and ingenuity will make the most common productions of nature useful to man, and that, on the other hand, without them the great advantages and profits expected from productions naturally rich and abundant are often altogether defeated : I ordain and command that industry and ingenuity in the mining business, which is of such vast importance therein, be excited, encouraged, and supported with all possible activity, intelligence, and discretion ; and that particular care and attention be bestowed in observing the use and effects of the machinery, and the operations and methods at present employed in the application of it, in order that, whatsoever is really useful and complete in its kind may be preserved in full perfection, without being gradually lost or depreciated, as often happens in such cases ; and that whatsoever, by comparison with better or more complete methods, shall appear capable of reform, may be brought into practice with the greatest degree of perfection and efficacy, without either suffering ancient prejudices founded on ignorance and caprice, to obstruct the progress of ingenuity, or ill-founded innovations, to disturb what is good and perfect in its present state.

SEC. 17. All persons who shall invent or propose any kind of machines, engines, expedients, operations, or methods for facilitating the working of the mines, which shall produce any advantage, however small the same may at first appear, shall have a fair hearing and attention ; and if, on account of their poverty, they are unable to make the experiments requisite for exhibiting their invention, the expense thereof, as well as the construction of the necessary machines, shall be defrayed out of the gen-



eral fund of the miners ; *provided*, that they shall demonstrate and calculate the effects of such projects ; and that, the Director General of Miners and the Professor of the College shall approve the same and consider them capable of being carried into effect ; but ill-founded projects, arising out of erroneous principles, or want of practical knowledge, and from which the deluded authors are easily led to expect vast and imaginary profits, shall be rejected as useless and contemptible ; and if the authors of such products shall renew their applications, they shall receive no attention, unless they make the experiments at their own expense, and establish themselves the utility of their inventions, and in all cases, the papers relating to such inventions shall remain in the archives of the Royal Tribunal in order to be referred to if necessary.

SEC. 18. All useful and improved inventions which, after being established and put into practice generally for the space of more than one year, shall be found to succeed, are to be rewarded with a patent to continue for the life of the author, in order that no one may make use of his invention, without his consent, and without allowing him a reasonable share of the profits, actually derived from the use of such invention.

SEC. 19. Whoever, from his experience, study, and observation, or from having traveled in other countries, shall offer for adoption any machine, expedient, or mode employed in other countries or in former times, and the same on examination and experience be approved of in the manner laid down by section seventeen of this chapter, he shall be considered and rewarded in the same manner as if he had been the actual inventor ; since, although his ingenuity may be less, his merit and trouble may have been greater, and the public advantage will be exactly the same, whether such mode result from an invention absolutely new, or from the introduction and application of a practice never before adopted in the place where it may be proposed.

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## CHAPTER XIX.

### PRIVILEGES OF THE MINES.

SECTION 1. Although the regulations laid down in these Ordinances for the discipline, economy, and method of working, which are to be adopted in the mines of New Spain, are calculated to diminish considerably the dangers and difficulties which have hitherto occurred in carrying on this most important business, rendering by their powerful coöperation

the richest of the mines more accessible, and the lawful modes of acquiring them less hazardous; nevertheless, considering the difficulties and uncertainties which usually attend operations of this kind, and that their precious produce is the especial grant and favor of Providence to my dominions in Spanish America, and is the chief source of the prosperity of my subjects, the support of my treasury, and the spring and moving power of the commerce of all my dominions, and to a great degree of that of the whole world—I have therefore granted and do grant to those persons who apply themselves to the working of the mines of New Spain all the favors and privileges which have been granted to the miners of Castile and Peru, in all respects in which they are capable of being adapted to the local circumstances of Spanish America, and are not at variance with anything established by these Ordinances.

SEC. 2. Moreover, I award to the scientific profession of mining the privilege of nobility, to the end that all persons who devote themselves to that important study and occupation may be esteemed and treated with all the distinctions which are due to so honorable an employment.

SEC. 3. Mine owners shall not be liable to be arrested for debts, neither shall the administrators, superintendents, keepers of tallies, nor other persons serving in the mines or establishments be so liable, provided that each of these persons in every such case remain in confinement within the mine or establishment to which he belongs, with an obligation upon his master to apply the third part of his salary or dues to the payment of his debts, as long as he remains in the service of such mine or establishment, and if he quits the same, without engaging himself in any other mine or establishment, then he may be imprisoned.

SEC. 4. If a sequestration be laid on the mines or establishments of any proprietor, in the interval during which the silver extracted therefrom is being applied in the satisfaction of the debt, he shall only receive out of the produce what is absolutely requisite for his support, according to the circumstances of his family and condition; but always with a view to this circumstance, that the situation of the creditor be not prejudiced, instead of amended, by the sequestration.

SEC. 5. If an execution be levied on the other property of a mine owner, there shall always be reserved to him a horse, with bridle and saddle, a baggage mule, his arms, bed, and the clothes commonly used by himself, his wife and children, and absolutely necessary to their decent appearance; but all costly dresses, ornaments, jewels, or trinkets, may be seized under the execution.

SEC. 6. The Royal Tribunal of Miners shall inform me, through the Viceroy, of all deserving persons belonging to the mining profession,

especially such as may have quitted it on account of it having consumed their capital therein, or being too old and infirm to pursue it; pointing out also such of them as the Tribunal may consider to be the most deserving of my Royal favor, in order to their being appointed to the offices of Judges in the mining districts or establishments, if that should appear expedient; as well for the purpose of rewarding them according to their merits, as of filling the said office with practical and intelligent persons, such as the law requires.

SEC. 7. The children and descendants of mine owners and mine suppliers who have been extensively concerned in the mines, deserve also particular consideration; and for that purpose, the Royal Tribunal shall also inform me, through the Viceroy, of the merits of their ancestors, in order that my Royal favor may appoint them to civil, military, and ecclesiastical appointments in America, if I shall think proper to do so.

SEC. 8. I declare that mine owners and administrators shall not be prevented, or in any way impeded by their said employments, from obtaining and serving the offices of magistrates and governors of the cities, towns, and places of the mining districts, or of any others; but they are not compelled to accept such offices, nor to be fined for declining the same, during the time of their employment in the mines, if they desire to excuse themselves on that account.

SEC. 9. In the allotment of ground for the purpose of building houses, in renting such as may be already built, and in providing themselves in the squares and market-places of the mining villages, towns, and districts, not only with the articles necessary for the mines and establishments, but also with the supplies and provisions which may be wanted for their homes and families, the miners are to be preferred to other persons, and to be treated with that respect which is due to their important profession. And I grant them the liberty of hunting and fishing in the mountains, forests, and rivers, of cutting wood and making charcoal, and of pasturing their cattle in the grazing places and watering places, in the same manner as any other inhabitant is permitted to do, supposing such mountains, forests, rivers, grazing places, and watering places, to be public property—for in all such as are private property, they must pay the proper dues as before enacted. And, finally, they are to enjoy all the customs and privileges enjoyed by the inhabitants of any mine town, although they (the miners) may not reside therein; *provided*, only, that in order to entitle them to these privileges, their mines or reducing establishments be situated in the same district as such mine town.

SEC. 10. The excessive profusion of miners in the employment of their capital, and their extreme imprudence and irregularity, whereby them-

selves and their families are speedily reduced to distress, and their capital is diverted from the operations of mining into other channels, being as notorious as they are destructive—I will and ordain, that the Judges and Deputies of the mine towns and districts shall advise thereupon, and in cases of necessity expostulate with the miners, particularly with those who are in prosperous circumstances, cautioning them against extravagant expenses or idle profusion ; and if this should be found insufficient, then that they shall make a report to the Royal Tribunal General of Miners, in order that the latter, after satisfying themselves of the reprehensible conduct of the miner concerning whom such report is made, may appoint a person to watch over his interests, or in some other manner provide for the preservation of his property, as in the case of an incorrigible spendthrift.

SEC. 11. In order to avoid the evil and injury, spiritual as well as temporal, occasioned by games of stake and hazard, and even by those which are permitted, when carried to excess, and also by other public diversions and festivities—I prohibit most rigorously, in all mine towns and districts, among masters, as well as workmen, all those games of cards which have been before prohibited by Royal edicts and decrees, and also all playing at those games which are permitted for a larger stake than is compatible with fair and moderate relaxation and amusement. And with equal rigor, I prohibit all playing at dice or tabas, and also cock-fighting, and all other shameful diversions, since they not only occasion the loss of time which might otherwise be devoted to labor, but lead to vast loss of property, and sometimes even to outrages and murders. Wherefore, I strictly enjoin the Judges and Deputies of all mine towns and districts to enforce, with the utmost vigilance, the provisions of this present section, on pain of being themselves wholly responsible for the neglect of the same, and of being liable to the penalties imposed by the said Royal edicts and decrees against all transgressors.

SEC. 12. The Royal Tribunal General of Miners shall observe and carry into effect whatsoever is contained in the present Ordinances, and shall cause them to be observed and fulfilled by all the subalterns, dependents, and inferior persons of all their body, each in his particular department, without any injurious evasions which might alter and corrupt their true spirit and intent, maintaining them always in their full vigor, and causing others to do the like. And the Territorial Deputations of Miners shall also observe and carry into effect whatsoever relates to them in these Ordinances, and shall cause them to be observed and executed with the utmost punctuality and correctness ; and they shall not, any more than the Royal Tribunal General, act or permit others to

act in contravention of their real tenor and meaning, in any manner whatsoever; and I only allow, in case of any point arising which is not comprehended herein, or provided for in the Royal orders which I have issued upon this subject, that both the one and the other (the Royal Tribunal General and the Deputations) should regulate themselves, in the decisions thereof, according to the form and practice of the Consulates of Commerce of my European and Spanish dominions, as far as the same shall be practicable in such cases; but all doubts which may at any time arise as to the true meaning of any one or more of the sections of these Ordinances, shall be proposed by the Royal Tribunal General to the Viceroy, in order that he, after obtaining the necessary information thereupon, may transmit them to me for my Royal determination.

SEC. 13. Finally, I order and command the Governor and persons composing my Supreme Council and Chamber of the Indies, the Royal Audiencias and Tribunals of New Spain, the Viceroy thereof, the Captains and Commandants General, the Governors, Intendentes, Ministers, Judges, and all other persons whatsoever, whom these enactments may in any degree concern, to conform themselves precisely to these Ordinances, observing and fulfilling them, each in his respective department, with the most rigid exactness; regarding their contents as positive and perpetual laws and statutes, and maintaining them and causing them to be maintained inviolably, notwithstanding any other laws, ordinances, observances, customs, or practices, which might militate against them; since, if any such there be, I revoke them expressly, and declare that they shall be of no effect, prohibiting as I hereby prohibit, that they (the present Ordinances) should be explained or in any manner whatever, since it is my will that they shall be understood literally, as they are written. And in like manner I most strictly enjoin all Tribunals, Magistrates, and Courts comprehended in this and the preceding section, to give their most effectual aid and assistance to the provisions and enactments of these my Royal Ordinances; preventing, as far as it is possible, all kinds of disputes and contentions, which will always incur my Royal displeasure, as being prejudicial to the administration of justice, and to the good government, tranquility, and happiness of the important body of miners of those my dominions; for which purpose I have commanded the dispatch of this present decree, signed by my Royal hand, sealed with my private seal, and countersigned by my underwritten Secretary of State, and of the General Department of the Indies, and which shall be entered in the General Office for the dispatch of the affairs of the Indies, and in the several offices of New Spain which it may concern. Done at Aran-

juez, the twenty-second day of May, in the year one thousand seven hundred and eighty-three.

I, THE KING,

JOSEPH DE GALVEZ.

Entered in the General Office of the Indies, Madrid, the twenty-fifth day of May, in the year one thousand seven hundred and eighty-three.

JOSEPH DE GALVEZ.

A true copy.

D. FRANCISCO MACHADO.

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The foregoing code of mining laws published in 1783, and the code of Gamboa published in 1761, constitute the principal mining laws which have been in force in Mexico during the past century. The code of 1783 and the changes subsequently made in the mining laws of Mexico are referred to by Rockwell in his work on Spanish and Mexican Law, vol. 1, page 21, as follows :

“From the year 1761 to 1783 no material alteration took place in the mining laws of Spain and her colonies. In the latter year, however, a code of laws was issued under the title of “Mining Ordinances of New Spain.” It was framed, as the title imports, for New Spain alone, but was subsequently adopted in all or most of the other Spanish Colonies. In the regulations which concern the working of the mines this code very closely follows the former ordinances, and where alterations are made, they are, not unfrequently from the suggestions offered in the work of Gamboa. As to the other points, the most important changes introduced by the ordinances of 1783, were, the erection of the *Tribunal general de Minería* and the *Diputaciones de Minería*, or general and local tribunals, to which the exclusive jurisdiction in mining affairs was confided ; the establishment of a Bank of Supplies and the organization of a School of Mines. But this code left the former ordinances and other mining laws in force, so far as they should not be at variance with the regulations it established, and hence the work of Señor Gamboa which was, previous to the year 1783, the paramount authority in all doubtful cases in mining affairs, continued after that date to be regarded with the highest respect, and was and is still constantly referred to in the Courts of Mexico, and as is presumed of the other new republics of America also, as a great authority on such subjects :

“Upon the establishment of the independence of the Spanish Colonies, they all, or most of them, adopted, in reference to mining, the laws exist-

ing previous to their separation from the mother country, with such modifications only as were rendered necessary by the alteration from a monarchical to a republican and federal form of government. In Mexico the principal of these alterations consisted as follows :

“ First, in the abolition of the General Tribunal of Mining, the functions of which were devolved upon the Mining Deputations or local Mining Tribunals of each State ; and, second, in a decree of the Sovereign Congress of Mexico, promulgated in the year 1823, empowering foreigners to hold shares in the mines furnished by them with supplies of money or stores.

“ The following changes have also been introduced in several of the States of the federation :

“ By a decree of the Congress of the State of Durango, dated the twenty-third of November, 1824, it was resolved that a *Tribunal de Minería*, or Mining Court for Appeals in the second instance, should be established, to consist of a lawyer and two miners ; and by another decree of the same Congress, dated the eighteenth of January, 1825, it was ordered that the Tribunal of Mining Appeals should exercise the same functions in that State as had been previously granted to the Tribunal established at Guadalaxara.

“ By an order of the Congress of the State of Chihuahua, dated the sixteenth of March, 1826, the *contentious* jurisdiction of the Mining Deputations was transferred to the ordinary Courts ; and by a decree of the same Congress, of the seventh of October, 1826, the Mining Deputations were made subject to the Supreme Government of the State in all matters as to which they had previously depended on the General Tribunal of Mexico, not being inconsistent with the present republican system.

“ Finally, by a decree of the Congress of the State of Guanaxnato, of the twenty-fourth of April, 1827, the *contentious* jurisdiction of the Mining Deputations was transferred to the ordinary Tribunals of Justice—their ministerial and economical authorities, as well as the ministerial and economical authorities of the extinct General Tribunal, remaining vested in them.

“ These are the only regulations by which any changes of importance are understood to have been introduced into the mining laws of the Republic of Mexico since the establishment of its independence.”

## RIGHTS OF FOREIGN RESIDENTS IN MEXICO.

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DECREE OF PRESIDENT COMONFORT, FEBRUARY 1st, 1856.

1. Foreigners settled in and residents of the Republic may acquire and possess real estate, either in town or country, including mines of all classes of minerals, coal included, either by purchase, adjudication, denouncement, or any other title known to the common laws or mining ordinances.

2. No foreigner shall, without previous permission from the Supreme Government, acquire any real estate in the States or Territories, near the frontier, within twenty leagues from the line thereof.

3. Foreigners wishing to obtain the permission referred to in the foregoing article, should make their petition to the Secretary of Fomento, that in view of the same, and upon the report of the Government of the State or Territory, it may determine what is fit in the premises.

4. In the acquisitions which by virtue of this law foreigners may wish to make of real estate, either in town or country, the actual lessees or occupants will have the right to remain under the same circumstances and conditions.

5. Foreigners acquiring real property by virtue of this law are subjected in all appertaining to it to the provisions already made, or which may be directed in future, relative to their removal, the use and preservation of said property in the Republic, as well as to the payment of all kinds of taxes, without being permitted to allege at any time their privileges as foreigners in this respect.

6. All questions which may arise about such property will be adjudged in the tribunals of the Republic, without foreign intervention of any kind.

7. Foreigners acquiring real estate in town or country, or mining property, in accordance with this law, will be obliged to take up arms



and serve as soldiers, when it may be necessary for the preservation and order of the settlement or city where they may reside. Except in these cases they cannot be compelled to such service.

8. Foreigners having acquired property in the Republic, wishing to become citizens of the same, will only have to prove that fact before the political authority of their residence. The evidence whereof, together with the corresponding petition, on being presented to the Secretary of Foreign Relations, the necessary certificate will be issued to them.

DECREE OF PRESIDENT JUAREZ, MARCH 16TH, 1861.

1. In order that foreigners residing in the Republic may be enabled to prove their nationalities and enjoy the privileges to which they are entitled by the laws and existing treaties with their respective governments, there shall be opened in the office of the Secretary of State and Foreign Relations, a register, where their names may be entered.

2. A term of three months from the publication of this decree—said term not to be extended—is hereby granted to all foreign residents desirous of enjoying the privileges accorded to them as such, to have their names recorded in said register.

3. Those foreigners residing outside the Capital shall present themselves with the necessary documents and proofs, to the Governors of the States and Territories in which they reside, who will communicate directly to the Secretary of State and Foreign Relations, and to whom they shall send a list of the names, and full description of those who may present themselves, as aforesaid.

4. Foreigners coming to the Republic must report themselves to the first political authority of the port at which they land, and obtain the certificate hereinafter referred to.

5. The Port Warden shall forward, with the quickest dispatch, a list of the persons landing there, with their names, and describing their nationality.

6. Foreigners neglecting to have their names registered within the above period shall be subject to a fine of ten dollars, and one dollar for every month thereafter from the time at which they should have so registered themselves.

7. No officer or public functionary shall recognize as a foreigner any one not having the requisite certificate issued by the Minister of Foreign Relations.

8. The Tribunals and Justices, whenever a suit is brought before them by a foreigner, shall exact from him the certificate aforesaid, and when

presented shall note its date and number ; and no foreigner shall be heard in Court or out of it, without presenting said certificate.

9. No Notary Public shall acknowledge any instrument executed by a foreigner, without previously having seen the aforesaid certificate, which he shall specifically refer to in the instrument which he may acknowledge.

10. No claim or demand made by foreigners shall be admitted in any public office of the Republic, without previous presentation of said certificate, which shall be noted in the proceedings commenced by them.

11. Foreigners can obtain said certificate and prove their nationality by the passport with which they came to the Republic, or by a certificate of their Consular or Diplomatic Agent of their nation, without having to make a written petition to the Secretary of Foreign Relations.

12. Any public officer acting in contravention to this decree shall be suspended from his office one month ; and if he be a Notary Public he shall be fined fifty dollars.

13. To those inscribing their names a certificate shall be given by the Secretary of Foreign Relations, who shall be the only officer authorized to issue them.

14. All fees for the issuance of said certificates shall be two dollars each, to be paid on entering the name in the register.

15. The Civil Judges are by this required to report monthly to the Secretary of Foreign Relations all changes that may take place in the civil state of foreigners.

#### DECREE OF PRESIDENT JUAREZ, MARCH 13TH, 1863.

1. Every foreigner who, for himself or in copartnership with other foreigners, should purchase land for agricultural purposes, they and their colonists are exempted for the term of ten years, reckoned from the day in which the deeds of purchase are signed, from the payment of all taxes, except the municipal ones which they may impose upon themselves, provided they file within one year a plan or draft, showing the boundaries of their land, with the Secretary of Fomento.

2. The foreigners comprised in the foregoing article will enjoy five years longer the privileges granted, provided that at the expiration of the first period they can show that they have in their employment, on their lands or colonies, a number of Mexicans employed constituting at least one-third of all the laborers or colonists.

3. They will not pay, for the period of two years, any import or internal duty, for all the effects directly consigned for the use of the colonies,

or tools and utensils for the use of the colonists, provided that any imported from Europe for their use, if thrown into the market, shall be confiscated.

4. The colonies formed under the foregoing laws, the principle of which is they shall be formed with foreign capital, will, without restraint, dispose of the municipal funds they may themselves create; and the Government shall not intervene in other than the administration of that revenue which he may please to assign to the colony.

5. The lands cultivated and colonies so formed will enjoy, during two years, in all things, the privileges hereby granted, and those given by the Constitution of the Republic to foreigners, according to the nationalities of the owner of the farm or a majority of the colonists.

6. In all cases not expressly designated by this law, the owners of property and the colonists are entirely subject to the laws of the country, and so will be all others at the termination of the different periods expressed in the foregoing articles.

The first part of the book is devoted to a general history of the United States from its discovery to the present time. It is written in a simple and interesting style, and is well adapted for the use of schools and families.

# APPENDIX

This appendix contains a list of the names of the Presidents of the United States, and a list of the names of the Vice-Presidents. It also contains a list of the names of the members of the Supreme Court, and a list of the names of the members of the Congress.

The second part of the book is devoted to a general history of the United States from its discovery to the present time. It is written in a simple and interesting style, and is well adapted for the use of schools and families.

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# APPENDIX.

## FORMS.

### CERTIFICATE OF INCORPORATION.

STATE OF CALIFORNIA, }  
County of ..... }

We, the undersigned, being desirous of forming a corporation for the purpose of mining, under and in pursuance of the laws of the State of California, do hereby certify and declare as follows, viz.:

*First.* That said corporation shall be known by the name of the "..... Mining Company."

*Second.* That the object of said corporation shall be to carry on and conduct the business of mining for.....in the.....Mining District ..... County, State (or Territory) of.....

*Third.* That the amount of the Capital Stock of said corporation, shall be.....dollars, which shall be divided into.....shares, of ..... each.

*Fourth.* That said corporation shall exist for the term of.....years.

*Fifth.* That the principal place of business of said corporation, shall be located in the City of.....County of.....State of California.

*Sixth.* That the number of Trustees who shall manage the concerns of said corporation for the first three months, shall be.....and the following are the names of the said Trustees, viz.:

*In witness whereof,* we have hereunto set our hands and seals this..... day of.....A.D. 186

[See Section 2, Act of April 14th, 1853, p. 1.]

### DEED.

#### MINING CLAIM TO INCORPORATED COMPANY.

THIS INDENTURE, made this ..... day of ..... in the year

of our Lord one thousand eight hundred and sixty-..... between the undersigned, parties of the first part, and the ..... Mining Company, party of the second part: *Witnesseth, that whereas,* the said ..... Mining Company has been duly incorporated under the laws of the State of California; *and whereas,* the said parties of the first part, the present owners of the mining ground or lode hereinafter described, are desirous of transferring to said corporation all the right, title, and interest which they and each of them have or claim therein.

*Now, therefore, know all men by these presents,* that the undersigned, parties of the first part hereto, and each of them, for and in consideration of the sum of one dollar to them, jointly and severally, in hand paid, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged (and for the further consideration of certificates of stock in said ..... Mining Company, hereafter to be issued to them, and each of them, their heirs and assigns, in proportion to their several interests as hereinafter mentioned), do hereby grant, bargain, sell, and convey unto the said Corporation, called the ..... Mining Company, its successors and assigns, all the right, title, and interest, possession, claim, and demand, whatsoever, as well in law as in equity, of said parties of the first part, and each of them, of, in, and to all that certain mining ground or lode, situate, lying, and being in ..... Mining District, ..... County, State (or Territory) of ....., known as the ..... Which said mining ground or lode was located by ..... on the ..... day of ....., A.D. 186., and recorded in Book ....., page ....., of the Mining Records of said District.

Together with all the dips, spurs, and angles of said mining ground or lode, and all and singular the tenements, hereditaments appurtenances, and privileges thereunto belonging.

To have and to hold the same, and every part thereof, with the appurtenances and privileges thereunto belonging unto the said..... Mining Company, its successors and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Interest of Grantor.]

[Names.]

[Seal.]

#### POWER OF ATTORNEY TO RECEIVE CERTIFICATES OF STOCK.

Know all men by these present that I, ....., do hereby make, constitute, and appoint..... my true and lawful attorney, for me and in my name, place, and stead, to receive certificates for..... shares of the capital stock of the..... Mining Company, and to

sign and execute all necessary papers to that end; hereby ratifying all lawful acts of my said attorney done by virtue hereof.

Witness my hand and seal, at....., this.....day of.....,  
A.D. 186 .

Witness: — [L.S.]

POWER OF ATTORNEY TO VOTE AT A MEETING OF STOCK-  
HOLDERS.

Know all men by these presents that I,....., do hereby make, constitute, and appoint.....my true and lawful attorney, for me and in my name, place, and stead, to vote as my proxy at ..... meeting of the Stockholders of the.....Mining Company..... according to the number of votes to which I should be entitled if personally present; with full power of substitution and revocation.

Witness my hand and seal, at....., this.....day of.....,  
A.D. 186 .

Witness: [L.S.]

[If this proxy is used at an election of officers, a ten cent Revenue Stamp must be affixed.]

—  
B Y - L A W S .

ARTICLE I.

NAME AND CAPITAL STOCK.

This Company shall be known as the "..... Mining Company," and shall have a capital stock of ..... dollars, which shall be divided into ..... shares of ..... dollars each.

ARTICLE II.

CORPORATE POWERS.

The corporate power of this company shall be vested in a Board of .... Trustees, and the other officers of the company shall be a President, Secretary, Treasurer, and Superintendent.

ARTICLE III.

MEETINGS OF STOCKHOLDERS.

The annual meeting of stockholders for the election of Trustees and transaction of other business, shall be held at ..... on the ..... of each year. Notice of all meetings of stockholders shall be given by publication for two weeks in some newspaper published in ..... and by special notice from the Secretary to each stockholder. No meeting of the stockholders shall be competent to transact business unless a majority of the stock is represented. In case a majority of the stock is not repre-

sented at the annual meeting, a similar notice shall be published and given by the Secretary calling another meeting within thirty days thereafter. Each share of stock shall be entitled to one vote, and each vote may be cast by proxy at all meetings of the stockholders. The proxy shall be in writing, and filed with the Secretary.

#### ARTICLE IV.

##### TRUSTEES.

The Trustees elected at the first annual meeting of the stockholders shall serve for one year, and until their successors are elected. Their term of office shall commence immediately after their election. Vacancies in the Board of Trustees shall be filled by the other Trustees in office within thirty days after such vacancy shall occur, and the person so elected shall hold office until the next annual election thereafter. No person who is not at the time of the election an owner of stock in the company, standing in his own name on its books, shall be eligible to election as a member of the Board of Trustees.

The Trustees shall present a full statement at the annual meeting of the stockholders, showing in full and in detail the assets and the liabilities of the company, and the general conditions of its affairs. They shall call a meeting of the stockholders, and present at the meeting a similar report whenever so requested in writing by stockholders representing one-third of the whole number of shares.

The Board of Trustees shall have power to call meetings of the stockholders whenever they deem it necessary. To appoint and remove at pleasure all officers, agents, and employés of this company, and to prescribe their duties, fix their compensation, and require security for faithful service. To make rules and regulations not inconsistent with the laws of the State of California, or the By-Laws of the Company. To declare dividends out of the surplus profits of the company whenever they may deem it advisable. To levy such assessments as in their opinion may, from time to time, be necessary for the purposes of the company; *provided*, that no assessment shall be levied exceeding ..... per share. To make all contracts which in their judgment will subserve the interests of the company; and the signatures of the President and Secretary to any contract or obligation, when authorized by a vote of a majority of the Trustees, shall be valid and binding upon the Company. To incur such indebtedness as they may deem necessary; *provided*, however, that no debt exceeding ..... dollars shall be contracted on behalf of the company, except with the express stipulation that the stockholders shall not be held liable in their individual capacity; and *provided*, further, that the debts of the company shall not at any time exceed in the aggregate the sum of ..... dollars.



It shall be the duty of the Trustees to cause to be kept a complete record of all their official acts, and full minutes of the proceedings of all meetings of the Board and of the stockholders. To require the Secretary and Treasurer to keep their books and accounts in a proper manner. To cause to be issued to the stockholders, in proportion to their respective interests, certificates of stock; *provided*, that the aggregate amount of the certificates so issued shall not exceed the capital stock of the company.

At the first meeting of the Board of Trustees they shall select one of their number to act as President, and elect a Secretary and Treasurer.

#### ARTICLE V.

##### PRESIDENT.

The President shall preside at all meetings of the Trustees and of the stockholders. He shall sign, as President, all certificates of stock, and all contracts and other instruments of writing which have been first approved by the Board of Trustees, and affix the corporate seal to all instruments requiring a seal. He shall draw all warrants on the Treasurer. He shall have the casting vote at all meetings of the stockholders or Trustees. He may call a meeting of the Trustees or stockholders whenever he shall deem it necessary, and shall have, subject to the advice of the Trustees, direction of the affairs of the company. In case of his absence or inability, from any cause, to discharge the duties of the office, the vacancy may be filled by the remaining members of the Board, permanently or temporarily, as the circumstances may require, and the person so elected shall be vested with all the powers of the office.

#### ARTICLE VI.

##### TREASURER.

The Treasurer shall safely keep all moneys and bullion belonging to the company, and disburse the same under the direction of the Board of Trustees, and in conformity with the By-Laws of the company. At each annual meeting of the stockholders, and as often as may be required by the Board of Trustees, he shall present a full statement of his accounts, with proper vouchers. He shall make no payment except on a warrant drawn by the President, and countersigned by the Secretary. He shall discharge such other duties as pertain to his office, and as may be prescribed by the Board of Trustees.

#### ARTICLE VII.

##### SECRETARY.

The Secretary shall keep a full record of the proceedings of the Trustees and of the stockholders. He shall keep the book of blank certificates of stock, fill up and countersign all certificates issued, and make the proper entries in the margin of such book on the issuance of certificates. He

shall cancel all certificates surrendered to him before issuing new certificates in lieu thereof, and shall preserve the certificate so surrendered and canceled as voucher. He shall keep a transfer book, and a stock ledger in debit and credit form, showing the number of shares issued to and transferred by any stockholder, and the date of such issuance or transfer. He shall countersign all warrants drawn on the Treasurer, keep proper account books, and perform such other duties as pertain to his office, and as are prescribed by the Board of Trustees.

The books of the Secretary, and such papers as may be placed on file by vote of the Trustees or Stockholders, shall at all times during business hours be subject to the inspection of any stockholder.

#### ARTICLE VIII.

##### SUPERINTENDENT.

A Superintendent shall be elected by the Board of Trustees, and be removed at their pleasure. It shall be the duty of such Superintendent to reside at the mine of the company, and take charge of all property there belonging to the Company, and control and direct all labor and business pertaining to the interests, object, and operation of the company at the mine; subject, however, as far as practicable, to the advice of the Trustees residing there, and entirely subject to the direction and control of the Board of Trustees. He shall make monthly returns to the Board of Trustees of all persons employed by the company, their wages and time employed, and shall present therewith a statement of all expenditures made by him, and his vouchers therefor (duplicates of which shall be kept by him), and he shall also report the general condition of the mining work; should he require funds, he shall make a requisition on the Board of Trustees therefor, stating the objects for which they are required. If approved by the Board of Trustees, the money shall be transmitted to him in such mode as they may direct, or he may provide funds by the sale of ore or bullion, if so authorized by the Board of Trustees.

#### ARTICLE IX.

##### CERTIFICATES OF STOCK.

Certificates of stock shall be of such form and device as the Board of Trustees may direct. Each certificate shall be signed by the President and countersigned by the Secretary, and bear the seal of the company, and express on its face its number, date of issuance, the number of shares for which, and the person to whom it is issued. Several certificates may be issued to the same person, provided that in the aggregate they do not exceed the number of shares belonging to such person. The certificate book shall contain a margin in which shall be entered the date, number of shares, and name of the person expressed in the corresponding certificate. No certifi-

ates of stock shall be delivered by the Secretary until the person entitled thereto shall have signed the By-Laws of the company.

#### ARTICLE X.

##### TRANSFER OF SHARES.

Shares in the company may be transferred at any time by the holder thereof, or by attorney legally constituted, or by their legal representatives, but no transfer shall be valid except as between the parties thereto, until the surrender of the certificate, and acknowledgment of such transfer on the books of the company.

No transfer of any share shall be valid upon which any assessments are then due and unpaid, or if the holder thereof is indebted to the company on any account whatever, until such account or debt is paid, or arranged to the satisfaction of the Board of Trustees.

#### ARTICLE XI.

##### COMPENSATION.

Neither the President, Treasurer, nor any member of the Board of Trustees, as such, shall receive compensation for their services. Reasonable traveling expenses shall be allowed by the Trustees to the President, or other member of the Board, engaged, by authority of the Board of Trustees, in the business of the company.

The Superintendent and Secretary shall respectively receive such compensation for their services as the Board of Trustees may from time to time determine.

#### ARTICLE XII.

##### VALIDITY OF CONTRACTS.

No contract by any officer of the company, other than for work and labor done and materials furnished, shall be valid without the previous approval or subsequent ratification by the Board of Trustees.

#### ARTICLE XIII.

##### AMENDMENTS.

These By-Laws may be altered or amended at any meeting of the stockholders of which notice has been given as provided in Article III, by a majority vote of all the shares.

## MINING DISTRICT LAWS.

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### REESE RIVER MINING DISTRICT, NEVADA TERRITORY.

SECTION 1. The District shall be known as the Reese River Mining District, and shall be bounded as follows, to wit: On the north by a distance of ten miles from the Overland Telegraph Line, on the east by Dry Creek, on the south by a distance of ten miles from the Overland Telegraph Line, and on the west by Edward's Creek, where not conflicting with any new districts formed to date.

SEC. 2. There shall be a Mining Recorder elected on the first day of June next, for this District, who shall hold office for one year from the seventeenth of July next, unless sooner removed by a new election, which can only be done by a written call, signed by at least fifty claim-holders, giving notice of a new election to be held after said notice shall have been posted and published for at least twenty days, in some newspaper published in or nearest this District; and the Recorder shall be a resident of this District.

SEC. 3. It shall be the duty of the Recorder to keep in a suitable book or books, a full and truthful record of the proceedings of all public meetings; to place on record all claims brought to him for that purpose, when such claim shall not interfere with or affect the rights and interests of prior locators, recording the same in the order of their date, for which service he shall receive One Dollar (\$1) for each claim recorded. It shall also be the duty of the Recorder to keep his books open at all times to the inspection of the public; he shall also have the power to appoint a deputy to act in his stead, for whose official acts he shall be held responsible. It shall also be the duty of the Recorder to deliver to his successor in office all books, records, papers, etc., belonging to or pertaining to his office.

SEC. 4. All examinations of the record must be made in the full presence of the Recorder or his deputy.

SEC. 5. Notice of a claim of location of mining ground by any individual, or by a company, on file in the Recorder's office, shall be deemed equivalent to a record of the same.

SEC. 6. Each claimant shall be entitled to hold by location two hundred feet on any lead in the District, with all the dips, spurs, and angles, offshoots, outcrops, depths, widths, variations, and all the mineral and other valuables therein contained—the discoverer of and locator of a new lead being entitled to one claim extra for discovery.

SEC. 7. The locator of any lead, lode, or ledge in the District shall be

entitled to hold on each side of the lead, lode, or ledge located by him or them, one hundred feet; but this shall not be construed to mean any distinct or parallel ledge within the two hundred feet other than the one originally located.

SEC. 8. All locations shall be made by a written notice posted upon the ground, and boundaries described, and all claimants' names posted on the notice.

SEC. 9. Work done on any tunnel, cut, shaft, or drift, in good faith, shall be considered as being done upon the claim owned by such person or company.

SEC. 10. Every claim (whether by individual or company) located, shall be recorded within ten days after the date of location.

SEC. 11. All miners locating a mining claim in this District, shall place and maintain thereon a good and substantial monument or stake, with a notice thereon of the name of the claim, the names of the locators, date of location, record, and extent of claim. It is hereby requested that owners in claims already located do comply with the requirements of this section.

SEC. 12. The Recorder shall go upon the ground with any and all parties desiring to locate claims, and shall be entitled to receive for such service One Dollar for each and every name in a location of two hundred feet each.

SEC. 13. It is hereby made the duty of the Mining Recorder upon the written application of twenty-five miners, to call a meeting of the miners of the District by giving a notice of twenty days through some newspaper published in the Reese River District, which notice shall state the object of the meeting, the place and time of holding the same.

SEC. 14. The laws of this District passed July 17th, 1862, are hereby repealed.

SEC. 15. These laws shall take effect on and after the fourth day of June, 1864.

## E R R A T A .

### MINING LAWS OF NEVADA TERRITORY.

[The following Sections were omitted in their proper place]:

*AN ACT to regulate Official Oaths.*

[Approved April 30th, 1861. Laws Nevada T., 1861, p. 37.]

FORM OF OATH TO BE TAKEN BY TRUSTEES OF CORPORATIONS.

SECTION 1. That all officers elected, appointed, or chosen, before entering upon the duties of their office, and all Attorneys, Counselors, and Solicitors in Chancery, in all the Courts of this Territory, before being admitted to practice, shall take and subscribe to the following oath, viz.:

“ I, [here name the person and the office to which he has been elected, appointed, or chosen] do solemnly [swear or affirm] that I will support, protect, and defend the Constitution and Government of the United States, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State, Convention, or Legislature, to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law, so help me God.”

.....

Sworn to and subscribed before me, this.....day of.....

*AN ACT to regulate Proceedings in Civil Cases in the Courts of Justice of the Territory of Nevada.*

[Approved November 29th, 1861. Laws Nevada T. 1861, p. 410.]

USAGES AND CUSTOMS.

SECTION 561. In actions respecting mining claims, proof shall be admitted of the customs, usages, or regulations established and in force in the mining district embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, shall govern the decision of the action in regard to all questions of location, possession, and abandonment.

Page 47, after title of act, read “ Wood’s Digest, p. 244.”

Page 79, fifth line from bottom, for “ p. 35 ” read “ p. 38.”

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Act, and if a major portion of the shares in such mining claim be represented at such meeting, then a majority of those present at such meeting shall be authorized to levy such assessment; but if a majority of the shares in such company be not represented at such meeting, then a majority of those present shall be authorized to cause the said mining claim to be prospected or worked, and thereafter the owners in such mining claim shall be liable for their respective proportion of the expenses so incurred in prospecting, working, or developing such claim, to the extent of the value of their interest in such claim and thereafter assessments may be levied from time to time, not oftener than once in 30 days, by any member not delinquent of said mining company, against delinquent members for the collection of sufficient amount of assessments to pay for the working and prospecting of such claim up to the time such assessment is made, and such delinquent assessment may be collected as in this Act provided; *provided*, that when the mining companies have by-laws designating what amount of work shall be done in such claim, then any assessment made as provided in this Act shall not exceed an amount sufficient to pay for the work required by the by-laws; and, *provided* further, that no new assessment shall be made until all previous assessments have been paid, or the remedies for the collection thereof shall have been exhausted.

Sec. 5. If the person so notified shall neglect or refuse to pay, or discharge such assessments, work, or liability, for ten days after personal service or leaving notice at his residence, when such service has been had or notice so left, or for twenty days after deposit in post or express office of such notice, when such deposit has been made, or until the expiration of the full period of publication herein provided, when publication is made, thereafter such delinquent shall be deemed to have absolutely forfeited and abandoned to the other members of said mining company, all the right, title, claim, and interest owned, held, or possessed by such delinquent in the said mining claim, such portion thereof as shall be sufficient to satisfy such delinquency; the remaining member or members may sell the interest of such delinquent member in and to such mining claim, or so much of said interest as may be required to pay such assessment or liability together with costs of sale.

Sec. 6. All sales under the provisions of this Act shall be at public auction at the mining claim, and shall be made by any constable of the township, auctioneer, or Sheriff of the county, and by giving ten days notice thereof by posting written notices in three public places within the mining district where such mine is located. The notice shall also specify the extent of the interest of the delinquent, and the amount of



# MINING PARTNERSHIP LAW.

AN ACT ENTITLED AN ACT CONCERNING PARTNERSHIPS FOR MINING PURPOSES—APPROVED APRIL 2, 1866.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. Whenever any two or more persons being owners, occupants, or locators, of any mining claim, or when any two or more persons shall have associated themselves together, with or without any written agreement, (but not as a body corporate,) for the purpose of working or prospecting any mining claim on any of the public lands of the United States, shall, after being notified in writing by any member of said mining company that they have been associated in said mining claim, be deemed to be copartners for the purpose of prospecting or working said mining claim, and shall be subject to the provisions and liabilities imposed by this Act.

Sec. 2. After a mining claim shall have been located, any person who shall be a member of the company desiring to work said claim, may notify the other members of the company of his or their desire to have an assessment levied against the owners of said claim for the purpose of prospecting, working, or developing such claim, designating a time and place for a meeting of the members of such company

company, or his heirs, executors, administrators, or assigns, in any mining claim, who shall neglect or refuse to pay any assessments, or shall neglect to perform any labor or other liability which shall become due from him under this Act, may, after the expiration of thirty days after such assessment, labor or other liability has become due, be notified in writing by any remaining member or members, or by his or their agent, that such assessment, labor, or other liability is due, which written notice shall specify the name of such mine and the district wherein it is located, and shall particularly mention the liability which has been incurred.

Sec. 4. Such notice, and all other notices required under this Act, shall be served as follows:

First—If the party reside in the country where the mine is located, it shall be delivered to him personally or left at his place of residence.

Second—If the party reside out of the country, but within the State, and his place of residence is known, such notice shall be deposited in a post office or express office, in a sealed envelop, with postage or express charges, as the case may be, prepaid, addressed to such party at his place of residence.

Third—If such party reside out of the State, or his place of residence is unknown, such notice shall be published once a week for eight successive weeks, in some newspaper published in the

delinquent member or members, and the time and place of such sale, which place shall be within the district where the mine is located, and shall commence by offering the smallest number of feet or shares in such claim for sale, and continue selling at the same time and place until a sufficient number of feet or shares is sold to pay the delinquent assessment or liabilities, and the officer selling shall execute a deed to the purchaser or purchasers, and such deed shall be received in all courts as *prima facie* evidence of the lawful authority of the officer selling, and of the regularity of all proceedings prior to the execution of the deed, and as *prima facie* evidence that all the right, title, and interest of the party delinquent has been lawfully and rightfully sold and conveyed to the purchaser, and the purchaser's title to such mining claim shall be absolute.

Sec. 7. The provisions of this Act shall also apply to all persons who have refused or neglected to sign articles of incorporation or a deed of trust in any incorporated mining company.

Sec. 8. An Act entitled an Act concerning partnerships for mining purposes, approved April 4th, 1864, is hereby repealed.

Sec. 9. This Act shall take effect from and after its passage.

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